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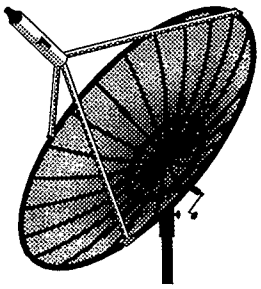
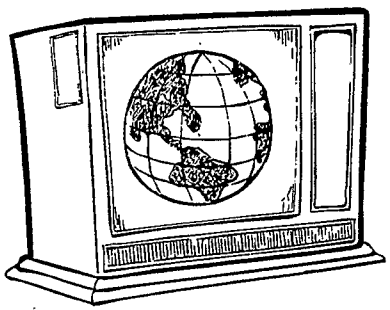
In the Matter of

Distribution of 1992, 1993, 1994 and 1995 Satellite Royalty Funds

Docket No. 97-1 CARP SD 92-95



DIRECT TESTIMONY AND EXHIBITS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC., ITS MEMBER COMPANIES AND OTHER PRODUCERS AND DISTRIBUTORS OF SYNDICATED SERIES, MOVIES AND SPECIALS BROADCAST BY TELEVISION STATIONS **(PROGRAM SUPPLIERS)**



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ATTACHMENT A

DESIGNATION OF PRIOR RECORDS

FROM DOCKET NO. 96-3 CARP-SRA
(Satellite Carrier Royalty Rate Adjustment Proceeding)

▪ Direct testimony and exhibits of each of the following witnesses filed on December 2, 1996 as well as the referenced oral testimony (including cross-examination exhibits):

Witness	Transcript Reference	
Marsha E. Kessler	Tr. 974 – 1039	(3/18/97)
Linda McLaughlin	Tr. 1606 – 1793	(3/22/97)

FROM DOCKET NO. 94-3 CARP-CD90-92
(Distribution of 1990, 1991 and 1992 Cable Royalty Funds)

▪ Direct testimony and exhibits of each of the following witnesses filed on August 18, 1995 as well as the referenced oral testimony (including cross-examination exhibits):

Witness	Transcript Reference	
Jack Valenti	Tr. 2710 – 2770	(12/20/95)
Allen R. Cooper	Tr. 2808 – 3032	(1/2/96)
Marsha E. Kessler	Tr. 3060 – 3332 Tr. 3319 – 3329	(1/3/96) (closed)
Jules Levy	Tr. 3341 – 3464	(1/4/96)
Henry Saperstein	Tr. 3469 – 3565	(1/4/96)
Robert Sieber	Tr. 3728 – 3977 Tr. 3901 – 3916 Tr. 3963 – 3972 Tr. 3984 – 4183 Tr. 4018 – 4036 Tr. 4175 – 4177	(1/9/96) (closed) (closed) (1/10/96) (closed) (closed)
John Claster	Tr. 4184 – 4291 Tr. 4253 – 4266	(1/10/96) (closed)

Howard Green	Tr. 4313 – 4621	(1/11/96)
Richard C. Thrall	Tr. 4853 – 5091	(1/17/96)
Paul Lindstrom	Tr. 8029 – 8361	(2/2/96)

▪ Rebuttal testimony and exhibits of the following witness filed on February 15, 1996 as well as the referenced oral testimony (including cross-examination exhibits):

Witness	Transcript Reference	
Allen R. Cooper	Tr. 8874 – 9211	(3/6/96)

▪ Direct testimony and exhibits of the following witness filed on August 18, 1995 as well as the referenced oral testimony and exhibits:

Witness	Transcript Reference	
Larry Gerbrandt	Tr. 1361 – 1580	(12/12/95)
	Tr. 1716 – 1799	(12/13/95)

Exhibits

P.S. Exhibits 6X, 17X, 23X, 24X, 28X, 31X, 43X, and 44X.

FROM DOCKET NO. CRT 91-3-CRA
(1991 Satellite Carrier Royalty Rate Adjustment Proceeding)

▪ Direct testimony and exhibits of the following witness filed on February 6, 1992 as well as the referenced oral testimony (including cross-examination exhibits):

Witness	Transcript Reference	
Fritz Attaway	Tr. 40 – 74	(2/10/92)

FROM DOCKET NO. CRT 91-2-89CD
(1989 Cable Royalty Distribution Proceeding)

▪ Direct and rebuttal testimony and exhibits of each of the following witnesses filed on August 16, 1991 and November 19, 1991, respectively, as well as the referenced oral testimony (including cross-examination exhibits):

Witness:	Transcript Reference	
Jack Valenti	Tr. 18 – 83	(9/12/91)
Marsha Kessler	Tr. 85 – 207	(9/12/91)
	Tr. 239 – 306	(9/13/91)
	Tr. 5176 – 5250	(12/13/91)
Allen Cooper	Tr. 307 – 369	(9/13/91)
	Tr. 376 – 521	(9/17/91)
	Tr. 535 – 689	(9/19/91)
	Tr. 697 – 790	(9/20/91)
	Tr. 5465 – 5544	(12/17/91)
John Woodbury	Tr. 4917 – 5061	(12/12/91)
Martin Frankel	Tr. 5070 – 5175	(12/13/91)
Alan Rubin	Tr. 5257 - 5457	(12/16/91)
Paul Lindstrom	Tr. 5550 – 5783	(1/14/92)

▪ Additional Exhibits:

P.S. Exhibits 1X-47X, 1RX-14RX

FROM DOCKET NO. CRT 84-1-83CD
(1983 Cable Royalty Distribution Proceeding)

▪ Direct and rebuttal testimony and exhibits of the following witnesses filed on May 13, 1985 and November 4, 1985, respectively, as well as the referenced oral testimony (including cross-examination exhibits):

Witness:	Transcript References	
Jack Valenti	Tr. 18 – 57	(6/19/85)
	Tr. 310 – 394	(6/24/85)
Henry Geller	Tr. 66 – 104	(6/19/85)

John A. Baumgarten	Tr. 111 – 205	(6/20/85)
	Tr. 5225 – 5359	(11/19/85)
Marsha Kessler	Tr. 241 – 257	(6/21/85)
	Tr. 298 – 300	(6/21/85)
	Tr. 5405 – 5458	(11/20/85)
Thomas Larson	Tr. 257 – 297	(6/21/85)
Allen Cooper	Tr. 589 – 687	(6/27/85)
	Tr. 752 – 805	(6/28/85)
	Tr. 1097 – 1149	(7/2/85)
	Tr. 1157 – 1294	(7/3/85)
	Tr. 1413 – 1440	(7/15/85)
	Tr. 5606 – 5712	(11/22/85)
Paul B. Lindstrom	Tr. 468 – 500	(6/25/85)
Donald Koehler	Tr. 508 – 580	(6/26/85)
John Ridall	Tr. 396 – 460	(6/24/85)
Nina A. Cornell	Tr. 5056 – 5219	(11/18/85)
Paul Goldstein	Tr. 5463 – 5598	(11/21/85)
Alan M. Rubin	Tr. 5719 – 5980	(11/24-26/85)

Testimony of

Marsha E. Kessler

My name is Marsha Kessler and I am Vice President, Copyright Royalty Distribution for Motion Picture Association of America. I appear on behalf of some 140 Program Supplier companies who claim shares of the 1992 – 1995 satellite carrier royalties. These companies include the ABC, CBS and NBC networks as well as syndicators and producers of television programming, whose works were broadcast by television stations and simultaneously re-transmitted by satellite carriers in any of the years 1992 -1995. PS Exhibit _____ (MEK- 1).

My entire professional career has been devoted to assuring that Copyright Owners are fairly compensated under the terms of the cable and satellite compulsory licenses. For over 16 years, I have been the individual at MPAA directly responsible for receiving and distributing Section 111 compulsory license royalties from cable systems and more recently, Section 119 royalties from satellite carriers. In addition to shepherding our represented companies through the filing of CARP claims and other related activities, I have testified on numerous occasions before the old Copyright Royalty Tribunal and the Copyright Arbitration Royalty Panel (CARP) and in Canada before the Canadian Copyright Board. I have also participated on a limited basis in royalty collection efforts in Europe. Last year, I appeared before the Intellectual Property Subcommittee of the House Judiciary Committee in relation to the rates paid by satellite carriers.

Prior to working for MPAA, I served on the very first-ever staff of the Copyright Office's Licensing Division - the Division responsible for processing compulsory license royalty payments. My work there was in the area of the

licenses for cable systems and jukebox operators. It was during my five years at the Copyright Office that I gained my basic education and experience with compulsory licenses.

My testimony in this hearing will address four areas:

- An overview of material and witnesses comprising Program Suppliers' case and a brief discussion of the licensing of television programming
- The nature of programming included in Program Suppliers' claim
- The relationship between usage and compensation of programming under the compulsory license
- An allocation mechanism based on consumer usage of programming including how the lack of syndicated exclusivity protection for satellite retransmissions affects the allocation of fees to Program Suppliers

Overview of Program Suppliers' Case

Program Suppliers' case will consist of material presented by myself plus six other witnesses.

Sandra Pope of MPAA will describe the process by which the satellite carriers calculate and pay their royalties. She will provide information about signals, growth in the number of subscribers and royalties, other data related to satellite carriage of broadcast stations.

Len Kalcheim, who represents entertainment and television clients, will provide information with respect to the process by which programming is created

and made available to television stations. He will also discuss the business of syndication and how that business operates.

Alan Wurtzel of ABC will look at programming from the network perspective. He will examine how network programming is created and/or acquired.

Dr. James Von Schilling, Area Chair for "Journalism and Media Culture" of the American Culture Association will describe the role television programming plays in popular American culture.

In her testimony, Linda McLaughlin of NERA will analyze the market value of programming to satellite carriers.

Paul Lindstrom of A.C. Nielsen will provide information about his company and about the process by which the Nielsen Studies for use in this proceeding were performed.

By way of these witnesses and their testimony, Program Suppliers will demonstrate that our programming is sought out by satellite carrier subscribers and we will quantify a basis for an allocation of Section 119 royalties to our group.

Buyers and sellers place a high value on television programming. Producers are willing to invest (or some might say risk) millions of dollars to create programs because they hope to recoup those amounts in license fees from stations. The stations, in turn, license the product based on the expectation that they will earn more in advertising dollars than they paid. Advertisers purchase commercial time on programs whose audience, the

advertisers hope, will purchase their goods and services and produce more in income than the amounts spent on the commercials.[1]

As Mr. Kalcheim will make clear in his testimony, all these decisions ultimately are tied to the viewing of programs. Viewing is the currency of the television industry in the sense that viewing creates value for programs. The more people who watch a program, the higher its value. Satellite carriers, like the rest of the industry, seek to retransmit programming that attracts large numbers of subscribers who want to view programs.

Satellite carriers pluck our product literally from the sky, retransmit it and charge fees to subscribers for providing them with our series and movies. And unfortunately for all owners of television programming, we have no rights to negotiate a fair price for our product in an open market because of Section 119.

How, then, is the Panel to determine a fair allocation to Program Suppliers for satellite carriers' use of our product? Let me tell you about Program Suppliers' claim, and then I will suggest a distribution formula that acknowledges the actual usage of our product by satellite carriers and by satellite subscribers.

The Nature of Program Suppliers' Claim

We claim series and movies. And sporting events. And documentaries. And news broadcasts. And parades. And beauty contests. And the Olympics. And specials. I would like to illustrate the breadth of Program Suppliers' claim by giving you a few examples of some of the different types of series produced and distributed by members of our group.

[1]Len Kalcheim will discuss the placement of programming in more detail in his testimony.

We claim **comedies**:

Andy Griffith	Cheers	Seinfeld
Frasier	Murphy Brown	Friends
Fresh Price of Bel Air		

And **hour-long serials**:

Murder, She Wrote	Northern Exposure
NYPD Blue	Dr. Quinn, Medicine Woman
ER	Hill Street Blues
Little House On The Prairie	

We claim **game shows**:

Price Is Right	Wheel Of Fortune	Jeopardy

Our claim includes **news and information** programs:

Headline News	ABC/CBS/NBC News
Inside Edition	Dateline NBC
Primetime	Entertainment Tonight
20/20	Meet The Press
U.S. Farm Report	Minority Business Report
Face The Nation	Motorweek
Wall Street Journal Report	

We claim "**non-Joint Sports" sports and sports-like programs**:

Fishing With Babe Winkelman	WWF Wresting
Women's' Pro Beach Volleyball	This Week In Baseball
Professional Tennis	The Olympics
U.S. Pro Ski Tour	LPGA Golf
NASCAR Racing	Pro Football Weekly
Power Stick Hockey Week	The Kentucky Derby

Cartoons are included in our claim:

Tom & Jerry	The Flintstones
Woody Woodpecker & Friends	Garfield

As are **programs that inform and educate**:

National Geographic On Assignment
Presidential and Vice-Presidential Debates
America's Black Forum
60 Minutes
McLaughlin Group

We claim **soap operas**:

The Young & The Restless
The Bold & The Beautiful
The Guiding Light
General Hospital

And morning and evening **talk/interview** shows:

Live With Regis & Kathie Lee
Late Show With David Letterman
Oprah
Good Morning, America
Rolanda
The Tonight Show
Today

We claim **entertainment shows** like SHOWTIME AT THE APOLLO.

And all kinds of **"miscellaneous"** programs:

Macy's Thanksgiving Day Parade
Annual Academy of Country Music Awards
Annual Soap Opera Awards
Travel, Travel
Jack Hanna's Animal Adventures
Friday Night Videos
Miss U.S.A. Beauty Pageant
Xena: Warrior Princess

And in addition to series, specials and documentaries, we claim **all movies** broadcast by the retransmitted stations.

As you can see, there is a wide variety of programming included in our claim.

The Relationship Between Usage Of Programming And Compensation

The compulsory license exists because of the perception that it would be too burdensome for the sellers of programming and the buyers of programming (satellite carriers) to negotiate for the use of tv shows in an open market. By virtue of the presence of the compulsory license, the Copyright Law clearly recognizes that, absent compliance with Section 119 payment and reporting requirements, carriers' retransmission of television programming without the owner's permission is an infringement. I equate retransmission by carriers with "use" of our programs.

Usage by whom? Copyright owners' works are used on two levels. The first level involves satellite carriers. Carriers need programming for their subscribers. To the extent that a carrier elects to retransmit broadcast stations carrying series, movies, sporting events and other programming, the carrier has made the choice to *use* that programming for his needs. At the point the carrier chooses to provide broadcast station programming, the satellite carrier, not the originating station, is now the supplier of that programming to subscribers.

The second level of consumption is with the subscriber. Satellite subscribers, particularly C-band subscribers, seem to have access to an almost unlimited number and type of programs. Some of these programs are from non-broadcast sources like USA Network or Arts & Entertainment which are licensed by the carriers through private negotiations. Some programs are from broadcast stations for which the satellite carriers pay compulsory license royalties. Even though a plethora of choices is available, subscribers can only view one program at a time. To the extent that subscribers opt to watch programs on retransmitted broadcast stations rather than programs from any of the other myriad of available choices, works owned by the participants in this proceeding

have been "*used.*" It is for this usage of our programming that Program Suppliers base our requested compensation.

Program Suppliers believe the best way to evaluate usage is by measuring . . . USAGE! By usage, we mean consumption or viewing by subscribers of our product on broadcast stations simultaneously retransmitted by satellite carriers.

In order to measure the viewing/usage of series and movies relative to the viewing to sports and other programs, MPAA commissioned special studies (one each for 1992 – 1995) from A.C. Nielsen. In these studies, we asked Nielsen to measure viewing by satellite subscribers to programs aired by broadcast stations retransmitted by satellite carriers. When I say "measure viewing," what I mean is a count of the number of satellite carrier subscriber households that watched the television station programming for each quarter-hour (i.e. 15-minute segment, abbreviated QH) of the day.[2] With the exception of the 1992 study, the studies measure satellite viewing for the months of February, May, July and November of 1993 – 1995. The 1992 study is lacking the month of February.

I participated in these studies in two ways. First, for each of the years 1992, 1993, 1994 and 1995, I provided Nielsen with a listing of stations to be measured. There was no selection of stations to be included. I forwarded all stations carried by satellite carriers during the relevant year. Secondly, I provided guidance with respect to the categorization of programs broadcast by those stations.

Each program in the Nielsen studies has to be assigned to a single distribution claimant category. The categories are unique to CARP presentations.

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[2] Paul Lindstrom of Nielsen will provide in-depth information regarding the implementation of the Study.

FRIENDS and GONE WITH THE WIND have to be assigned to the "series and movies" category, Orioles' games have to be assigned to the "sports" category and so forth. In that way, when the number of satellite households (SHH) viewing a particular program at a particular time is determined, those households can be accounted for under the appropriate category, be it series/movies, sports or whatever.

PS Exhibit _____ (MEK-2) is a copy of MPAA's guide to program categorization for cable royalty distribution. MPAA created this guide to provide categorization information consistent with CARP requirements in connection with the categorization of Section 111 (cable) programs. Use of this guide, in my opinion, is also appropriate to categorize Section 119 (satellite) programs

The categorization of nonnetwork programs is a task that everybody wants someone else to do correctly, but nobody wants to be the person to do the work. It is very easy to assign the lion's share of the programs to a specific category. Most everyone recognizes FRASIER and DESIGNING WOMEN as "series" and a Seattle Mariners baseball game as "sports." But there are times when assigning programs to specific categories is a real headache.

CARP categorization can defy everyday reason. Here is one of the more difficult examples:

There are myriad wrestling programs on broadcast television. Some of the shows' names begin with the initials "WCW" - World Cup Wrestling - for example WCW SATURDAY NIGHT. A separate set of programs involves "WWF" (World Wrestling Federation) WRESTING. Although many viewers might consider wrestling to be "really sports," wrestling is anything but a sport for CARP categorization. Wrestling is a syndicated series in many, but not all cases.

The first show cited above is a good (read, problematic) example. Several programs all have similar names, beginning with "WCW" (e.g. WCW MAIN EVENT WRESTLING, WCW PRO WRESTLING, WCW POWER HOUR WRESTLING). Whenever the WCW programs are available to multiple stations, they are considered syndicated for CARP purposes. Whenever they are available only on one station, they do not meet the CARP's definition of syndicated. It is difficult enough to figure out if these programs are available to only one station, but it becomes even more complicated when individual episodes of the same program are marketed differently. Some may be licensed to several stations and some may be available only on one station. Episodes broadcast on more than one station are syndicated, while other episodes seen only on one station are not syndicated.

Other programs that "sound like sports" – LPGA GOLF, INDYCAR RACES, THE OLYMPICS, WORLD CUP SKIING/TENNIS, BOXING, etc. – nonetheless belong in the syndicated series category. Local high school sports events do not belong in either the series category or the sports category, but rather in a separate category (local).

The examples of difficulties in categorization given above are limited to just a few in keeping with the two parties to this proceeding. In reality, there are six categories (see PS Exhibit _____ (MEK-2)), only one of which is the appropriate program type for each program under analysis.

Again, the purpose of assigning each program to a unique category is to credit the appropriate CARP category with the proper viewing (usage). Proper categorization an important step in assuring that the relative value of all program categories is accurately expressed.

With regard to this study, Nielsen sent viewing information to MPAA and we passed it on to Cable Data Corporation (CDC) in Bethesda, MD. CDC already had the program names and categorizations from work it had done relative to cable distributions for 1992-1995. Using the viewing data provided by Nielsen, Cable Data did the actual data processing that resulted in the measurement of satellite viewing to the various categories. The results of each year's study done for this case are shown as PS Exhibit ___ (MEK- 3).

The exhibit shows four groups of information, one for each of the years 1992-1995. Using 1993 as an example, here is how to interpret the data in the exhibit. The first line reports the number of quarter-hours of programming broadcast by stations included in the study. The 1993 Nielsen study examined a total of 177,479 quarter hours of programming during the February, May, July and November periods studied.

Of that amount, Program Supplier's category accounted for 132,345 QH (74.57% of the total). The Joint Sports category accounted for 5,732 QH (3.23% of the total). All other programs accounted for 39,402 QH or 22.20% of the total.

The data in the third line, household viewing hours (HHVH), are the result of a formula. The formula takes into account both the amount of time the program was available and the extent to which the program was consumed, i.e. viewed, by satellite households (SHH). The HHVH formula looks like this:

$\Sigma QH/4$ X number of SHHs that actually viewed

Here is how the formula would work for a 30-minute make-believe series "A Day In CARP" that ran Monday – Friday and was viewed by 150 satellite households.

First we sum the number of QHs during which the program was broadcast. For our pretend series, that number is 10 (5 days times 2 QH/day). Next we divide that number by four to express the time in hours. 10 QH divided by 4 is 2.5 hours. The final calculation is to multiply the 2.5 hours by 150, the number of SHHs that "actually viewed" the program. 2.5 times 150 is 375 household viewing hours (HHVH).

The same calculation was performed for every program in each year's study. Then, the viewing hours for all programs in each CARP category were added together to reach a category viewing total. The results for the different categories are shown on the second viewing line of the exhibit for each year.

In the case of 1993, there were a total of 179,684,892 HHVH in the study. Of that amount, the Program Supplier category accounted for 142,168,972 HHVH or 79.12% of total viewing. The Joint Sports category accounted for 16,902,733 HHVH or 9.41% of viewing. Viewing to all other programs accounted for 20,613,187 HHVH or 11.47% of total viewing.

To reiterate, these studies report the actual *usage* of television programming by satellite subscribers during the 1992-1995 period. The exhibits quantify the relative use of series/movies v. sports v. other programming.

Syndex Royalties

From May 1992 through the end of 1995, a portion of the royalties collected for the carriage of superstations comprised a "syndicated exclusivity" (or "syndex" for short) surcharge. All the syndex royalties should be distributed to Program Suppliers.

The term **syndicated exclusivity** needs some explication here. Programs are licensed to television stations on a market-exclusive basis, i.e., only one station in a market has the right to broadcast a specific program. The Federal Communications Commission's syndicated exclusivity rules, which I will discuss below, were created to "level the playing field" with respect to cable's importation of syndicated television programming. These rules apply to syndicated programming only and to no other type of programs on broadcast television.

A bare-bones example of the rule would involve the only television station in a market that has the right to broadcast syndicated episodes of FRASIER. If a cable system operating in that station's market "imports" a television station from a separate market and that imported station also airs FRASIER, the syndicated exclusivity protection rules allow the local station to request the cable system to black-out its retransmission of FRASIER on the imported station. The black-out preserves the local station's exclusive right to broadcast FRASIER in its market.

As I said, the rules were designed to protect Program Suppliers' rights insofar as their ability to sell syndicated programming on an exclusive basis in each television market. Exclusivity is considered an important right by both Program Suppliers and television stations because it allows maximization of audience for that program. Advertisers generally are willing to pay a higher price for an "exclusive" audience than for a non-exclusive one. This means that stations are thus willing to pay more for the exclusive rights.

A problem arises when FRASIER is available in a local market via two venues, i.e., one from the local station and the second via cable retransmission of a broadcast station from another market. In that situation, a local advertiser will not pay as much for commercial time on FRASIER because some of the local audience will watch FRASIER including commercials on the imported station

rather than the local broadcast. As a direct consequence of the station's lost audience to cable importation, an advertiser will pay less to the station and thus the station will pay less for the program. As a result, Program Suppliers are unable to maximize FRASIER's value wherever exclusivity is not protected.

Absent syndicated exclusivity black-out protection ("syndex"), the audience is fragmented between two showings (a broadcast and an imported cable) of FRASIER. The FCC's syndicated exclusivity black-out protection rules applicable to cable importation make it possible to maintain the exclusivity that is key to maximizing revenues in syndication.

The circumstances differ when a satellite carrier (rather than a cable system) retransmits FRASIER. The FCC's black-out protection rules do **NOT** apply to satellite carriers. The FCC decided it was technologically infeasible for satellite carriers to be required to black-out programming in individual markets. A local station carrying FRASIER cannot request a black-out of the satellite carrier's retransmission of FRASIER from a station in another market. And therein lies the rub.

The 1992 Section 119 rate adjustment recognized this loss of exclusivity protection. In the rate adjustment case, the CRT divided independent (i.e., nonnetwork) stations into two categories, "Syndex-Proof Superstations" and "Superstations" and set different rates for their carriage.

There are two types of syndex-proof stations. One type of syndex-proof superstation licenses syndicated programming on a nationwide, non-exclusive basis. That means the syndicated programs on such a station can be licensed to that station and to any other broadcast station in the country. Because these rights are freely-negotiated, the syndicator and the station can set an agreed-upon price for loss of exclusivity. Satellite carriers have created another type of syndex-proof station. They have done this by substituting other programming

on the satellite feed in those time slots where the originating station broadcasts a syndex-protected program. The CRT ruled no syndex-related royalty adjustment was needed in either situation and set the rate at 14¢/subscriber/month for each syndex-proof superstation.

Even though the remaining superstations do not have rights to broadcast syndicated programming on a national basis, satellite carriers are not required to blackout programming on these stations to protect local market exclusivity. Therefore, when syndicators seek to license their programs in local markets, they are faced with the program's already being available via superstation retransmission. To offset the lack of black-out protection in these cases, the CRT found allowing a syndex surcharge was consistent with Section 119 and so set a surcharge of an additional 3.5¢ above the syndex-proof rate, or 17.5¢ per subscriber per month in total for each superstation. The additional 3.5¢ is designed to offset the loss of syndicated sales revenue in the local television market due to the lack of exclusivity protection.

As I indicated earlier, the FCC's syndicated exclusivity protection rules apply *exclusively* to syndicated programming only, which is claimed in these proceedings by Program Suppliers. The rules do not apply to sports programming nor to any other programming. It is therefore appropriate that the entire amount generated by the 3.5¢/subscriber/month syndex fees be awarded solely to Program Suppliers.

An Allocation Mechanism Based On *Usage*

At the beginning of this testimony, I said I would suggest an allocation formula that takes into account both the 1992-1995 syndex fees and the results of the special Nielsen studies. The next two exhibits demonstrate how I arrived at this formula and the resulting Program Supplier claim.

The results of the Nielsen viewing studies offer a reliable means for determining the allocation of royalties. Moreover, use of these viewing results is consistent with the importance given ratings data by the broadcast and cable industry. As Len Kalcheim and Paul Lindstrom will testify, the currency of the television industry is **audience**. Actual audience (*usage!)* is relied on by suppliers of all kinds of programming – network and nonnetwork, cable and non-cable - to conduct their normal business.

Nielsen measurements quantify that usage. The measurements provide a gauge of the behavior of satellite carrier subscribers as they consume, *use,* television broadcast programming. The Nielsen special studies presented in these hearings measure actual *usage* by satellite subscribers of television station programming retransmitted by satellite carriers during this period.

PS Exhibit _____ (MEK-4) is a tabulation of superstations carried by satellite carriers during 1992-1995. The data were taken directly from Statements of Account (SOAs) filed by satellite carriers at the Copyright Office. The tabulation is organized by accounting period, 1992 through 1995. The first column reports the accounting period. By way of explanation, "92/1" means the first (January – June) account period of 1992. The second column names the carrier. The third column identifies the superstation. The next column shows the number of "total subscribers" reported during each accounting period. In 1992, I only counted the number of subscribers in May and June because the syndex fees did not become effective until May 1, 1992. The last column calculates the syndex surcharge by multiplying the number of total subscribers for the period times 3.5¢.

At the end of each year's calculation are tabulations of the total fees paid for that year and the amount of syndex fees included in those receipts. By dividing these numbers, I determined the percentage attributable to syndex fees for each year.

The following exhibit, PS Exhibit _____ (MEK- 5) incorporates both the results of the Nielsen studies and the syndex fees percentage in arriving at a proposed share for Program Suppliers. The exhibit has four tables, one each for 1992 through 1995. I refer to 1992 to illustrate the process.

The first step was to calculate the amount of royalties to be allocated between Program Suppliers and Joint Sports. For 1992, as per the Copyright Office's "Report Of Receipts" dated 12/11/98, satellite carriers paid $6,505,590. This amount does not take into account interest earned on those funds or deductions for Copyright Office and CARP expenses. From that amount, I deducted 15.5%, the amount accepted by the settling parties. That left $5,497,224 (84.5%) to be allocated between Program Suppliers and Joint Sports.

Of that amount, I determined the amount to be allocated between Program Suppliers and Joint Sports. That amount consisted of the 84.5 % to be allocated between both parties, less $329,277 (5.0614% per PS Exhibit____ (MEK-4)) in syndex fees which are directly payable to Program Suppliers. This left $5,167,947 to be allocated between Program Suppliers and Joint Sports.

The bottom portion of each year's table shows how I would allocate this amount between the litigating parties. First, I combined Program Suppliers' and Sports' viewing shares from the 1992 Nielsen study as shown in PS Exhibit _____ (MEK-3). Our joint viewing shares totaled 88.5380% (Program Suppliers' 79.8655% plus Sports' 8.6725%.)

I then adjusted this number upward so that both parties' viewing shares added to 100%. This adjustment recognizes that we are the only two claimants to the remaining 84.5% of the fund. The adjusted viewing shares for 1992 were 90.2048% for Program Suppliers and 9.7952% for Joint Sports.

Multiplying those revised shares times the non-syndex funds ($5,167,947) to be allocated resulted in $4,661,735 for Program Suppliers and $506,212 for

Joint Sports. The task in this proceeding is to allocate the 84.5% that remains after deducting the settling parties' 15.5% share. This makes it necessary to express these dollar amounts as percentage shares of the total deposits for 1992 ($6,505,590) so that all shares add up to 100%. Program Suppliers' percentage of total deposits is 71.6574% to which I added the 5.0614% syndex allocation, bringing Program Suppliers overall share to 76.7188%. When that is added with Joint Sports' 7.7812% share, the two numbers equal 84.5%, exactly the share to be allocated by the CARP in this proceeding.

I followed the same procedure for all four periods, 1992 – 1995. The resulting percentage allocations for Program Suppliers are:

1992	76.7188%	1993	76.2502%
1994	76.7452%	1995	77.1838%

What I hope the Panel will take away from my testimony are the following points:

- The compulsory license compensates the owners of programming when their works have been broadcast by television stations and those stations' signals have been simultaneously retransmitted to subscribers who pay for the service.

- Absent compliance with the provisions of the compulsory license (Section 119 of the Copyright Act), satellite carrier retransmission of television programs is an act of infringement. The intent is clearly to compensate the actual usage of television programming.

- The Nielsen studies offer reliable estimates of the actual usage of television programming, both by the satellite carriers and by subscribers.

- The syndicated exclusivity fees paid by superstations are by definition, fees intended to compensate syndicated programming only. These fees are without question, wholly due to Program Suppliers.

- My distribution formula fairly that takes into account both usage of all television programming offered by satellite carriers plus allocation of all syndex fees to Program Suppliers.

I am grateful to the Panel for considering my testimony and that of the other six Program Supplier witnesses.

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge. Executed on January 7, 1999.

Marsha E Kessler

P.S. Exhibit ___ (MEK-1)

Program Supplier Claimants -- Satellite Carrier Royalties, 1992-1995 PS Exhibit _____ (MEK-1)

CLAIMANT	95 TVRO CLAIM #	94 TVRO CLAIM #	93 TVRO CLAIM #	92 TVRO CLAIM #
ABC INC.	26	64	189 & 208	129 & 234
ALL AMERICAN GOODSON, INC.	80			
ALL AMERICAN TELEVISION, INC.	36	18	33 & 80	42 & 43
ALLIANCE DISTRIBUTING CORPORATION	179	154		
ALLIED COMMUNICATIONS, INC.	8	169	206	
ALPHA LIBRARY COMPANY, INC.	181 et al			
ASSOCIATED ENTERTAINMENT RELEASING	85			
ATLANTIS RELEASING, INC.	168 & 194	172	58	236
ATLAS MEDIA CORP.			258	220
BBC WORLDWIDE AMERICAS, INC.	64	161	251	219
BERL ROTFELD PRODUCTIONS			150	108
BLITZ ART PRODUCTS, INC.			103	
BOHBOT ENTERTAINMENT, INC.	5		250	180
BROADWAY VIDEO	123		173 & 174	176 & 177
BUENA VISTA TELEVISION	144	56	221	238
CABLE NEWS NETWORK, INC.	52		92	
CALIFON PRODUCTIONS, INC.	75	97	184	231
CANADIAN BROADCASTING CORPORATION	142	48	45	64
CANNELL ENTERTAINMENT, INC.	192	45		
CAROLCO PICTURES				237
CARSEY WERNER COMPANY		10	141	48
CBS, INC.	79	66	68	152
CENTURY GROUP LIMITED	124	27	81	2
CHILDREN'S TELEVISION WORKSHOP	66	142	73	169
CINAR PRODUCTIONS INC.		3		224
CINEPIX INC.	173	173		
CINETEL FILMS, INC.			247	
CLASTER TELEVISION, INC.	99	128	54	161
CONCORDE-NEW HORIZONS CORP.	119			
CPT HOLDINGS, INC.	74	95	183	230
CROWN INTERNATIONAL PICTURES, INC.			109	226
CRYSTAL PICTURES, INC.	167	175	97	92
DELTA LIBRARY COMPANY	170	55	230	201
DIC ENTERTAINMENT, L.P.	84	158	226	134
DICK CLARK PRODUCTIONS, INC.	191	139	217	203
D.L. TAFFNER LTD	16	25	85	89
DOW JONES & COMPANY, INC.	4	7	7	162
EPIC PRODUCTIONS INC.	182 & 184			
ESTEFAN ENTERPRISES			215	
FILM ROMAN, INC.	180	69	253	
FILMTEL INTERNATIONAL CORP.				260
FOUR STAR INTERNATIONAL, INC.	196	119	196	262
GAUMONT TELEVISION			197	199
GAYLORD PRODUCTION COMPANY		100	222	125
GAYLORD PROGRAM SERVICES		98	224	127
GENERAL MILLS, INC.	3	85	175	
GENERALE BANK NEDERLAND N.V.	186			
GOLD KEY ENTERTAINMENT, INC.		118		
GOLDEN GATE PRODUCTIONS	111	36	146	112
GROUP W PRODUCTIONS	160	131	199	174

Program Supplier Claimants -- Satellite Carrier Royalties, 1992-1995 PS Exhibit _____ (MEK-1)

CLAIMANT	95 TVRO CLAIM #	94 TVRO CLAIM #	93 TVRO CLAIM #	92 TVRO CLAIM #
GUTHY-RENKER	150			
H-B DISTRIBUTION CO.	60	77	90	51
HALLMARK ENTERTAINMENT DISTRIBUTION COMPANY	49			
HEARST ENTERTAINMENT, INC.	17	110		171
HERITAGE ENTERTAINMENT, INC.	6	22		
HOME BOX OFFICE, A DIV. OF TIME WARNER ENT. CO., LP	33	33	256	225
HOME SHOPPING NETWORK	155	150	238	266
INTERSPORT TELEVISION	110	112		
ITC DISTRIBUTION, INC.	166	162	231	3
JEOPARDY PRODUCTIONS, INC.	76	96	182	229
JOHNAR FILM PRODUCTIONS		5	2	
JOHNSON PUBLISHING COMPANY, INC.		37	147	114
KALEIDOSCOPE MEDIA GROUP, INC.	34 & 35			
KELLEPRODUCTIONS, INC.	23			32
KENT & SPIEGEL DIRECT, INC.	118			
KING WORLD PRODUCTIONS, INC.	134	166	242	233
KINNEVIK MEDIA PROPERTIES, LTD.	11	4		168 & 206
LANDSBURG COMPANY	117	160	229	217
LARRY HARMON PICTURES CORP.	1	2	20	27
MAJOR LEAGUE BASEBALL PROPERTIES, INC.	143	115	260	211
METRO-GOLDWYN-MAYER, INC.	72	24	162 & 164	87
MG/PERIN, INC.				62
MISSING TREASURES PRODS.				271
MOSO PRODUCTIONS	29	89		33
MTM ENTERPRISES, INC.	105	174	225	165
MULTIMEDIA ENTERTAINMENT, INC.	157	149	237	268
MUTUAL OF OMAHA	120			
NATIONAL BASKETBALL ASSOCIATION	113	73	154	105
NATIONAL BROADCASTING COMPANY, INC.	133	135	249	207
NATIONAL GEOGRAPHIC SOCIETY	129	54	232	232
NATIONAL MEDIA CORPORATION.	106			
NELVANA ENTERPRISES, INC.	104	60		196
NEW FAMILY COMPANY, THE				98
NEW LINE CINEMA CORPORATION	102	171	46	244
NEW WORLD ENTERTAINMENT, LTD.	135	111	195	
NEW WORLD/GENESIS DISTRIBUTION	22	177	166	65
NFL FILMS	109	114	188	113
NHL ENTERPRISES, INC.		138	186	241
NSB FILM CORPORATION	188			
OLIVER PRODUCTIONS			135	149
OPRYLAND U.S.A., INC.		99	223	126
ORION PICTURES CORPORATION	88	46		50
OVERSEAS FILMGROUP, INC.	86	159	212	
OVERVIEW PRODUCTIONS, INC.	48	144	246	
PALLADIUM LIMITED PARTNERSHIP			174	177
PARADISE FILMS, INC.			156	29
PARAMOUNT PICTURES, A VIACOM COMPANY	68	49	32 & 197	20

Program Supplier Claimants -- Satellite Carrier Royalties, 1992-1995 PS Exhibit _____ (MEK-1)

CLAIMANT	95 TVRO CLAIM #	94 TVRO CLAIM #	93 TVRO CLAIM #	92 TVRO CLAIM #
PERENNIAL PICTURES				190
PROCTER & GAMBLE PRODUCTIONS, INC.	30	167		
PRO FOOTBALL WEEKLY	108	35	152	110
PROSERV, INC.		134		
RAYCOM, INC.	67		273	205 & 239
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.	15	8	194	213
REPUBLIC PICTURES CORP.	2		195	150
RHI ENTERTAINMENT, INC.		143	248	259
RYSHER ENTERTAINMENT	163 & 164	146	263	269 & 270
SABAN ENTERTAINMENT, INC.	126	121	119	21
SAMUEL GOLDWYN COMPANY, THE	7	21	6	167
SFM MEDIA CORPORATION	116	124	265	170
SI FEATURES, INC.	172			
SPELLING TELEVISION, INC.		120	129 et al	
SPORTS ILLUSTRATED, A DIVISION OF TIME, INC.	171			
SPORTS LEGENDS, INC.			151	109
SPORTS NETWORK, INC.	151	113	148	111
STEPHEN J. CANNELL PRODUCTIONS, INC.	193	44	69 et al	153-55
STEVE ROTFELD PRODUCTIONS, INC.	107	38	149	115
STEVE WHITE PRODUCTIONS			257	
SUMMIT MEDIA GROUP, INC.	190			
SUPERSTATION, INC.	59	80	95	
TBS PRODUCTIONS		76	87	
TELEVEST, INC.	152	51		
TIME LIFE FILMS, A SUB. OF TIME WARNER ENT CO., LP		34	255	175
TITANSPORTS, INC.		42	213	49
TOGETHER AGAIN PRODUCTIONS, INC.	128	165	254	227
TRACEE PRODUCTIONS	175	175		
TRIBUNE ENTERTAINMENT COMPANY	141	127	270	254
TRISTAR TELEVISION, INC.				228
TURNER BROADCASTING SYSTEM, INC.	51	75	89	53
TURNER ENTERTAINMENT CO.	57	78	91	52
TURNER ORIGINAL PRODUCTIONS, INC.	58			
TURNER PICTURES WORLDWIDE, INC.	56	79	93	
TURNER PROGRAM SERVICES, INC.	55	82	94	
TURNER SPORTS, INC.	54	83	96	
TWENTIETH CENTURY FOX FILM CORPORATION	100	90	170	94
UGC-UK		53	171	131
UNIVERSAL CITY STUDIOS, INC.	176	39	103	78
UPA PRODUCTIONS OF AMERICA	63	1	120	68
U.S. CHAMBER OF COMMERCE	90	9		163
WARNER BROS.	83	109 & 106	121 & 122	103 & 104
WEISS GLOBAL ENTERPRISES	103			198
WELK GROUP	24	26		124
WESTCOM			234	
WESTERN INTERNATIONAL SYNDICATION	121	164	220	1
WEXLER ENTERPRISES, INC.		52	104-106	
WORLD CHAMPIONSHIP WRESTLING, INC.	53	81	88	
WORLDVISION ENTERPRISES, INC.	2	58	118	41
ZODIAC ENTERTAINMENT, INC.			72	40

P.S. Exhibit ____ (MEK-2)

PROGRAM CATEGORIZATION OF NON-NETWORK TELEVISION PROGRAMS

1. LOCAL

Programs produced by or for only one commercial television station and broadcast exclusively by that one station during the calendar year.

Excluded from the category are programs comprised predominantly of syndicated elements such as music video shows, cartoon shows, "PM Magazine," and locally-hosted movie shows.

Programs such as parades, telethons, political events, etc. as well as programs that cannot be positively assigned to other categories may be included in the "Local" category if they were broadcast by a single commercial station. Care should be taken to check that such programs were not broadcast by other stations not in the MPAA sample.

No program identified as having been broadcast by two or more television stations, including noncommercial stations, is to be classified "Local." All such programs are to be assigned to the appropriate category.

2. SYNDICATED SERIES AND SPECIALS AND MOVIES

Programs licensed to and broadcast by at least one commercial television station during the calendar year, exclusive of programs assigned to any of the other categories.

Programs produced by or for a commercial broadcast station and broadcast by two or more broadcast stations (including commonly-owned stations) during the calendar year. The stations need not be in the MPAA sample.

Programs produced by or for a commercial station which are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally-hosted movie shows are included here.

This category includes all movies.

3. DEVOTIONAL SERIES

   Syndicate programs that are of a primarily religious theme.

4. SPORTS

   Play-by-play (full game) coverage of professional MLB baseball, NBA basketball, NASL soccer, NHL hockey, NFL football, NCAA basketball, and NCAA football. Other "Sports-like" programming, e.g. wrestling, golf, car racing, etc. should be assigned to another category (generally local or syndicated) as appropriate.

5. OTHER

   Untitled programs which cannot be assigned to any of the categories given above. This category includes such titles as "Filler," Rain Delay," "TBA," etc.

6. NONCOMMERCIAL

   All programming on noncommercial educational stations is assigned to this category.

P.S. Exhibit ___ (MEK-3)

Comparative Viewing - Nielsen Satellite Studies, 1992-1995

ROYALTY YEAR 1992	1992 TOTAL	PROGRAM SUPPLIERS	JOINT SPORTS	ALL OTHER PROGRAMMING
QUARTER HOURs	131,874	98,801	3,938	29,135
% QHs	100.0000%	74.9208%	2.9862%	22.0931%
HOUSEHOLD VIEWING HRs.	109,653,526	87,575,327	9,509,669	12,568,530
% VIEWING	100.0000%	79.8655%	8.6725%	11.4620%

ROYALTY YEAR 1993	1993 TOTAL	PROGRAM SUPPLIERS	JOINT SPORTS	ALL OTHER PROGRAMMING
QUARTER HOURs	177,479	132,345	5,732	39,402
% QHs	100.0000%	74.5694%	3.2297%	22.2009%
HOUSEHOLD VIEWING HRs.	179,684,892	142,168,972	16,902,733	20,613,187
% VIEWING	100.0000%	79.1213%	9.4069%	11.4719%

ROYALTY YEAR 1994	1994 TOTAL	PROGRAM SUPPLIERS	JOINT SPORTS	ALL OTHER PROGRAMMING
QUARTER HOURs	220,586	166,541	6,730	47,315
% QHs	100.0000%	75.4994%	3.0510%	21.4497%
HOUSEHOLD VIEWING HRs.	244,597,437	191,967,006	21,228,353	31,402,078
% VIEWING	100.0000%	78.4828%	8.6789%	12.8383%

ROYALTY YEAR 1995	1995 TOTAL	PROGRAM SUPPLIERS	JOINT SPORTS	ALL OTHER PROGRAMMING
QUARTER HOURs	264,676	199,354	7,304	58,018
% QHs	100.0000%	75.3200%	2.7596%	21.9204%
HOUSEHOLD VIEWING HRs.	402,566,382	322,728,005	32,895,967	46,942,410
% VIEWING	100.0000%	80.1676%	8.1716%	11.6608%

PS EXHIBIT _____ (MEK-3)

P.S. Exhibit ____ (MEK-4)

Syndex Royalties, 1992-1995 PS EXHIBIT _____(MEK-4)

A/P	CARRIER	SUPERSTATION	TOTAL SUBS	SYNDEX FEES AT 3.5 CENTS/SUB*
92/1	PRIMESTAR	KTLA	54,966	$1,924
92/1	UNITED VIDEO	KTLA	382,136	$13,375
92/1	PRIMESTAR	KTVU	54,966	$1,924
92/1	NETLINK	KWGN	489,838	$17,144
92/1	PRIMESTAR	WPIX	54,966	$1,924
92/1	UNITED VIDEO	WPIX	473,192	$16,562
92/1	EMI	WSBK	530,799	$18,578
92/1	PRIMESTAR	WSBK	54,966	$1,924
92/2	PRIMESTAR	KTLA	224,277	$7,850
92/2	UNITED VIDEO	KTLA	1,307,581	$45,765
92/2	PRIMESTAR	KTVU	224,277	$7,850
92/2	NETLINK	KWGN	1,691,909	$59,217
92/2	PRIMESTAR	WPIX	224,277	$7,850
92/2	UNITED VIDEO	WPIX	1,576,912	$55,192
92/2	EMI	WSBK	1,838,570	$64,350
92/2	PRIMESTAR	WSBK	224,277	$7,850
			TOTAL SYNDEX	$329,277
			TOTAL FUND, '92	$6,505,590
			SYNDEX PORTION	5.0614%
93/1	PRIMESTAR	KTLA	313,101	$10,959
93/1	UNITED VIDEO	KTLA	2,611,100	$91,389
93/1	PRIMESTAR	KTVU	255,529	$8,944
93/1	NETLINK	KWGN	2,082,461	$72,886
93/1	PRIMESTAR	WPIX	313,101	$10,959
93/1	UNITED VIDEO	WPIX	1,982,260	$69,379
93/1	EMI	WSBK	2,417,900	$84,627
93/1	PRIMESTAR	WSBK	255,529	$8,944
93/2	PRIMESTAR	KTLA	380,445	$13,316
93/2	UNITED VIDEO	KTLA	4,042,585	$141,490
93/2	NETLINK	KWGN	2,598,294	$90,940
93/2	PRIMESTAR	WPIX	380,445	$13,316
93/2	UNITED VIDEO	WPIX	2,885,362	$100,988
93/2	EMI	WSBK	2,889,761	$101,142
			TOTAL SYNDEX	$819,276
			TOTAL FUND, '93	$11,941,192
			SYNDEX PORTION	6.8609%

PS EXHIBIT_____
(MEK-4)

A/P	CARRIER	SUPERSTATION	TOTAL SUBS	SYNDEX FEES AT 3.5 CENTS/SUB*
94/1	NETLINK	KDVR	95,189	$3,332
94/1	UNITED VIDEO	KTLA	4,902,303	$171,581
94/1	PRIMESTAR PTNRS	KTVU	390,742	$13,676
94/1	NETLINK	KWGN	2,958,461	$103,546
94/1	PRIMESTAR PTNRS	WPIX	329,319	$11,526
94/1	UNITED VIDEO	WPIX	3,539,444	$123,881
94/1	EMI	WSBK	3,420,193	$119,707
94/2	NETLINK	KDVR	2,505,001	$53,615
94/2	UNITED VIDEO	KTLA	5,666,720	$198,335
94/2	PRIMESTAR PTNRS	KTVU	598,986	$6,179
94/2	NETLINK	KWGN	3,295,636	$115,347
94/2	UNITED VIDEO	WPIX	3,931,600	$137,606
94/2	EMI	WSBK	3,851,654	$134,808
			TOTAL SYNDEX	$1,193,138
			TOTAL FUND, '94	$18,026,425
			SYNDEX PORTION	6.6188%
95/1	UNITED VIDEO	KTLA	6,286,438	$220,025
95/1	NETLINK	KWGN	3,449,693	$120,739
95/1	UNITED VIDEO	WPIX	4,194,179	$146,796
95/1	EMI	WSBK	4,095,807	$143,353
95/2	UNITED VIDEO	KTLA	6,320,450	$221,216
95/2	NETLINK	KWGN	3,478,464	$121,746
95/2	UNITED VIDEO	WPIX	4,281,585	$149,855
95/2	EMI	WSBK	3,841,175	$134,441
			TOTAL SYNDEX	$1,258,173
			TOTAL FUND, '95	$23,262,607
			SYNDEX PORTION	5.4086%

* Syndex fees for satellite carriers became effective 5/1/92. These figures calculate syndex royalties effective that date.

P.S. Exhibit ____ (MEK-5)

Proposed Allocation of 1992-1995 Satellite Carrier Royalties Between Program Suppliers and Joint Sports

FEES TO BE ALLOCATED, 1992	AMOUNT
TOTAL DEPOSITS, '92	$6,505,590
LESS SETTLEMENTS (15.5%)	-$1,008,366
AMT. AVAILABLE TO PROGRAM SUPP's & SPORTS (84.5%)	$5,497,224
LESS SYNDEX (5.0614% OF DEPOSITS)	-$329,277
BALANCE (79.4386%)	$5,167,947

PARTY, 1992	1992 NIELSEN	RAISED TO 100%	SHARE OF $5,167,947	SHARE OF TOTAL DEPOSITS $6,505,590	PLUS SYNDEX	SHARE OF TOTAL DEPOSITS
PROGRAM SUPPLIERS	79.8655%	90.2048%	$4,661,735	71.6574%	5.0614%	76.7188%
SPORTS	8.6725%	9.7952%	$506,212	7.7812%	0.0000%	7.7812%
TOTAL	88.5380%	100.0000%	$5,167,947	79.4386%	83.6736%	84.5000%

FEES TO BE ALLOCATED, 1993	AMOUNT
TOTAL DEPOSITS, '93	$11,941,192
LESS SETTLEMENTS (15.5%)	-$1,850,885
AMT. AVAILABLE TO PROGRAM SUPP's & SPORTS (84.5%)	$10,090,307
LESS SYNDEX (6.8609% OF DEPOSITS)	-$819,276
BALANCE (77.6391%)	$9,271,031

PARTY, 1993	1993 NIELSEN	RAISED TO 100%	SHARE OF $9,271,031	SHARE OF TOTAL DEPOSITS $11,941,192	PLUS SYNDEX	SHARE OF TOTAL DEPOSITS
PROGRAM SUPPLIERS	79.1213%	89.3741%	$8,285,902	69.3893%	6.8609%	76.2502%
SPORTS	9.4069%	10.6259%	$985,129	8.2498%	0.0000%	8.2498%
TOTAL	88.5282%	100.0000%	$9,271,031	77.6391%	83.6736%	84.5000%

FEES TO BE ALLOCATED, 1994	AMOUNT
TOTAL DEPOSITS, '94	$18,026,425
LESS SETTLEMENTS (15.5%)	-$2,794,096
AMT. AVAILABLE TO PROGRAM SUPP's & SPORTS (84.5%)	$15,232,329
LESS SYNDEX (6.6188% OF DEPOSITS)	-$1,193,138
BALANCE (77.8812%)	$14,039,191

PARTY, 1994	1994 NIELSEN	RAISED TO 100%	SHARE OF $14,039,191	SHARE OF TOTAL DEPOSITS $18,026,425	PLUS SYNDEX	SHARE OF TOTAL DEPOSITS
PROGRAM SUPPLIERS	78.4828%	90.0428%	$12,641,275	70.1264%	6.6188%	76.7452%
SPORTS	8.6789%	9.9572%	$1,397,916	7.7548%	0.0000%	7.7548%
TOTAL	87.1617%	100.0000%	$14,039,191	77.8812%	83.6736%	84.5000%

FEES TO BE ALLOCATED, 1995	AMOUNT
TOTAL DEPOSITS, '95	$23,262,608
LESS SETTLEMENTS (15.5%)	-$3,605,704
AMT. AVAILABLE TO PROGRAM SUPP's & SPORTS (84.5%)	$19,656,904
LESS SYNDEX (5.4086% OF DEPOSITS)	-$1,258,173
BALANCE (79.0914%)	$18,398,731

PARTY, 1995	1995 NIELSEN	RAISED TO 100%	SHARE OF $18,398,731	SHARE OF TOTAL DEPOSITS $23,262,608	PLUS SYNDEX	SHARE OF TOTAL DEPOSITS
PROGRAM SUPPLIERS	80.1676%	90.7497%	$16,696,802	71.7752%	5.4086%	77.1838%
SPORTS	8.1716%	9.2503%	$1,701,929	7.3162%	0.0000%	7.3162%
TOTAL	88.3392%	100.0000%	$18,398,731	79.0914%	83.6736%	84.5000%

PS EXHIBIT _____ (MEK-5)

Testimony of Sandra Pope

Experience

I graduated from the State University of New York, Oswego, NY in 1980 with a bachelor's degree in business administration. After graduation, I worked for Columbia Pictures as a paralegal for five years, until the end of 1985. My duties there consisted of the review and analysis of legal documentation to determine feature film distribution and ancillary rights. I then worked for two years (1986 to 1988) in a Washington, DC law firm, again as a paralegal, assisting a partner in handling copyright and trademark matters.

In 1988, I began working at the Motion Picture Association of America ("MPAA"). My current title is Director, Domestic Cable Copyright Compliance. My duties at the MPAA consist of the review and analysis of cable and satellite statements of account filed in the Licensing Division of the Copyright Office to determine compliance with Section 111 and Section 119 of the Copyright Act. In the more than ten years that I have been at the MPAA, I have reviewed thousands of cable statements of account and all satellite statements. I have spear-headed the enforcement program in recovering over $31 million in additional royalties due to copyright owners.

Purpose of Testimony

My testimony will address three areas:

1. the requirements for completing the Section 119 statement of account filings and for calculating satellite carrier royalty fees;

2. the composition of the 1992-1995 satellite carrier royalty fund and the growth in subscribers and royalties during that period;

3. a comparison of the satellite carrier royalty statistics with cable royalty statistics.

1. The Statement of Account Form

The first part of my testimony will walk you through the statement of account form and the royalty fee calculation. Under Section 119 of the Copyright Act, satellite carriers must file statements of account and submit royalty payments on a semi-annual basis. Congress, as part of Section 119, instituted the statement of account forms as the reporting mechanism for royalty information. The Copyright Office created the specific form ("Form SC") used by satellite carriers to report the required information and to calculate the royalty fees owed. The royalty fees paid by the carriers are the subject of this proceeding.

Each statement of account covers a six-month period, either January-June or July- December, of the year. The January-June period is commonly referred to as the first accounting period of the year, and is usually written as, for example, the "1999/1" or "99/1" period. The July-December period is called the second accounting period, and is usually written as, for example, "1999/2" or "99/2." The filing deadlines for statements of account are July 30 for the first accounting period and January 30 for the second accounting period of a year.

I have included a blank statement of account as P.S. Exhibit ___ as part of my written testimony. At the back of the form are general instructions explaining how to file and how the compulsory license works. One part of these instructions contains definitions of many of the terms used in determining satellite carrier

royalties. These definitions match the definitions found in Section 119. The instructions are also a how-to manual for filing out the statement of account. Since this portion of my testimony describes how to fill out the statement of account, I am not going to spend any time reviewing the instructions here.

Going back to the first page of the statement, we see that the form is divided into boxes. Each box is labeled "Space" followed by a letter designation. Space A identifies the accounting period and year covered by the particular statement of account. Space B reports the legal and business (if different) names and business address of the reporting satellite carrier. There are only a handful of satellite carriers, so it easy to keep track of which carriers made their filings. But in the case of cable royalty filings, where thousands of cable systems make filings, the ownership information helps in tracking whether an individual cable system has made the required filing.

Space C requires the carrier to report the television signals offered to subscribers. Stations are identified by their call sign, channel number and location. In addition, the carrier must categorize whether a station is either a superstation (SS), a syndex-proof superstation (SP) or a network affiliate station (N). A different per subscriber royalty rate applies to each type of station. In the original Section 119, Congress set different rates for superstations and networks. Next, the 1992 rate adjustment case made a new category, called syndex-proof superstations, and set a new rate for this type of station along with increasing the rates for network stations and superstations. The definition of a syndex-proof signal is found on page (ii) of the general instructions. Finally, Congress

amended Section 119 through the Satellite Home Viewing Act ("SHVA"), which became effective October 18, 1994. SHVA modified the definition of network stations to include both Fox affiliated stations and noncommercial educational stations. While SHVA did not change any per subscriber royalty rates, its new network definition meant that the per subscriber rate for some stations had to be modified.

The following chart sets forth the various types of stations and the applicable monthly per subscriber royalty rate throughout the 1992-95 period. Unfortunately, there was no uniformity in how or when rate changes took place. The first time period shown on the left, the January to April 1992 period, was when the statutory rates set in the original Section 119 were in effect. One quirk in those rates was that the treatment of educational stations was unclear. As shown on the chart, one carrier paid the superstation rate of 12 cents (later increased to 17.5 cents) for carriage of WHYY (an educational station), while another carrier paid the network rate of 3 cents (later 6 cents) for carriage of KRMA (another educational station).

The next time period shown on the chart began in May 1992 when the first Section 119 rate adjustment went into effect. That decision created a new category – syndex-proof superstations – for which a 14-cent per subscriber rate was charged. During 1992-1995, the only syndex-proof superstations were WTBS, WGN and WWOR.

The same decision increased superstation rates to 17.5 cents and the network station rate to 6 cents. The final section on the chart corresponds to

when the SHVA became effective in October 1994. Under SHVA, Fox stations and educational stations were both redefined as network stations, and were charged at the network station rate of 6 cents.

Station Type	Jan.-April 1992	May 1992 to Dec. 1995	May 1992 to Oct. 1994	Oct. 1994 to Dec. 1995
Network	$0.03	$0.06		
Fox	$0.12		$0.175	$0.06
Superstations	$0.12	$0.175		
Syndex-proof	N/A	$0.14		
Educ (WHYY)	$0.12		$0.175	$0.06
Educ (KRMA)	$0.03	$0.06		

Space D of the statement of account is divided into two parts. In Part I, carriers report the number of "total subscribers" to each television station retransmitted by the reporting carrier. Carriers must report stations by type: that is, superstations, syndex-proof superstations and network stations. For each station retransmitted, a carrier must report the number of subscribers who receive that station on the last day of each month of the accounting period. The monthly subscriber counts for each station are added together to reach a "total subscriber" count for the entire accounting period. If the carrier offers more than one station of the same type, the carrier would also add together all the station

totals to determine the "grand total" of subscribers for that type of station during the accounting period.

In Part 2 of Space D of the statement of account, a carrier computes the royalty fee owed. Royalty fees are computed by multiplying the number of "grand total" of subscribers by the monthly per subscriber royalty rate applicable for each station type in the particular time period. For example, in the 1995/2 period, the first step in the royalty calculation was to multiply the grand total of superstation subscribers by $0.175; the next step was to multiply the grand total of syndex-proof superstation subscribers by $0.14; next, the grand total of network stations was multiplied by $0.06. All these royalty subtotals are then added together to determine a carrier's total royalty fee, shown at the last line in Part 2 of Space D. This is the amount that the carrier submits to the Copyright Office as its royalty fee for the accounting period involved.

Space E is where a carrier computes interest in the event that it makes a late payment or has underpaid the royalty fee. Space F identifies a person from the carrier who would be available to answer questions about the filing. Space G is the verification of the truth and accuracy of the information reported in the statement.

Completed statements of account and royalty fees are submitted to the Licensing Division of the Copyright Office. Examiners at the Licensing Division review the statement of account filings for accuracy. If an examiner finds an obvious mistake in the filing, he or she will send a letter to the carrier explaining the problem. In cases where the carrier has not paid the full amount of royalties,

the examiner will request that additional payments, plus interest, be submitted to rectify the problem. If the carrier has overpaid, the Copyright Office will issue a refund. The Copyright Office has no enforcement power regarding royalty payments. This means that if a carrier disagrees with an examiner's assessment of a statement of account filing, the carrier can ignore letters sent by the examiner. The burden of enforcing the royalty provisions is on the copyright owners who must file a copyright infringement action against the offending carrier to seek payment of the full amount of royalties owed.

2. Growth of Subscribers and Royalties

For the second part of my testimony, I analyzed all the satellite carrier statement of account filings for 1992-1995. Seven different carriers filed statements at various times during those years. They are DirecTV, Inc.; PrimeTime 24, Joint Venture; PrimeStar Partners, LP; United Video Satellite Group, Inc.; Southern Satellite System Inc.; Netlink, USA; and EMI. These carriers offered 18 different television stations in the 1992/1 period, generally increasing up to 25 stations in the 1995/2 period. P.S. Exhibit __(SP-1) lists the stations reported as retransmitted by carriers in each of the periods. The four types of stations reported for royalty purposes are: network stations (N); non-commercial, educational stations (E); superstations (SS); and syndex-proof stations (SP). The number of network stations increased from 8 in 1992 to 14 in 1995; educational stations remained constant at 2; superstations went from 5 in 1992 to 6 in 1995; and syndex-proof stations stayed constant at 3.

Next, I analyzed the growth of subscribers and royalty fees over these years in P.S. Exhibit __(SP-2). From 1992 through mid-1994, consumers had to use the large ("C-band") dishes to receive satellite-delivered programming. Subscriber growth in this period could be described as slow but steady. In mid-1994 a significant change occurred with the introduction of direct broadcast service ("DBS"), which relies on small, 18-inch satellite dishes. When DirecTV, a DBS provider, filed its first statement in the 1994/2 period, it reported a monthly subscriber count in July 1994 of 4,415. By December 1995, DirecTV reported a monthly subscriber count of over 950,000. Royalties did not increase at such a fast pace, only increasing from $6.5 million in 1992 to $23.3 million in 1995.

P.S. Exhibit__(SP-2) shows information taken directly from the statements of account. Carriers report "total subscribers" in Space D of the statement of account (page 3). "Total subscribers" is the sum of the monthly counts of subscribers receiving each station offered. Under this reporting procedure, an individual subscriber who receives, for example, three different stations in a month will be counted three different times in reporting the number of "total subscribers." As a result, the number of "total subscribers" will always be higher than the number of people actually subscribing to satellite carrier service.

The "grand total subscriber" count reported in the statement of account is the sum of all the monthly subscriber counts. This means that a subscriber receiving three broadcast channels during the entire accounting period would be counted 18 times (3 stations X 6 months) for purposes of the "grand total subscriber" number. This multiplier effect can be seen in the "grand total

subscribers" count of over 229,000,000 reported for 1995, which is much, much higher than the roughly 95 million television households in the United States in 1995. To put the "total subscribers" in somewhat more realistic figures, I divided the "grand total subscriber" count for each semiannual accounting period by 6 to derive a monthly "total subscriber" count. The monthly "total subscriber" count nearly quadrupled from 4.9 million in 1992 to 19.1 million in 1995.

Royalties grew nearly as fast during that period, from $6,505,034 in 1992 to $23,261,764 in 1995. The slightly slower royalty growth is due to the different royalty rates charged for the different types of stations, as I showed in the chart above at page 5.

The next exhibit, P.S. Exhibit ___ (SP-3), compares the growth in "total subscriber" count (on annual and per month bases) and yearly royalty fee payments for each type of television station offered by satellite carriers from 1992 to 1995. For this analysis, I reviewed the statements of account and determined the "total subscriber" count reported for each station listed in the statements of account. As part of the statement of account, carriers must report if a station is an educational (EDUC), a network affiliate (NETS), syndex-proof superstations (SP), and superstations (SS). I added together the "total subscriber" counts and royalty payments for all stations within each station type from all carriers to calculate the aggregate amounts for each type of station in each year.

As the figures at the top of P.S. Exhibit ___(SP-3) show, carriage of all types of stations increased over the period. The charts at the bottom of the exhibit graphically show the increases over the years. The left-hand chart shows

the growth in "total subscriber" counts by station types in each year. Although all types of stations experienced growth, the networks had the fastest growth rate. In fact, the networks "total subscriber" count in 1995 was virtually the same as the combined "total subscriber" count for educationals, syndex-proof superstations, and superstations. The right-hand chart at the bottom of the exhibit shows growth in royalty payments over the years. There is growth in the royalty payments for all types of stations with the syndex-proof stations accounting for the largest share in each year. Even with the networks having a much lower per subscriber rate than superstations (6 cents for networks vs. 17.5 cents for superstations), the royalty payments for networks exceeded those for superstations in 1995.

I then determined the percentage share for each station type of the "total subscriber" count and royalty fee payments. This is shown in P.S. Exhibit ___ (SP-4). For each year, I showed the results numerically and then graphically. The 1992 results are shown on the top half of the first page. The percentages were calculated by dividing the numbers shown on P.S. Exhibit __ (SP-3) by the total for each year. For example, the educational royalties of $213,276 represent 3.28% of all 1992 royalties. I then used pie charts to show the percentage shares for each type of station, with one chart for "total subscriber" count and the other for royalty fee payments. As you look through the pie charts for the years, you will note that the network share grows the most, particularly in the "total subscriber" charts.

3. Cable and Satellite Comparison

The last exercise that I undertook was to analyze how the contribution of different station types compared between cable and satellite. The comparable cable statistic to satellite "total subscriber" counts is cable "subscriber instances." Cable Data Corp. ("CDC") regularly determines cable "subscriber instances" for the different types of stations retransmitted by cable systems as well as the royalty fees attributable to each station type. I used CDC's data to calculate the percentage shares of "subscriber instances" and royalty fees on the cable side. For cable, there are only three station types: educationals, networks and independents as compared to the four types of satellite stations. To make satellite equivalent to cable, I aggregated the syndex-proof superstation and superstation data to arrive at a satellite "independent" station total.

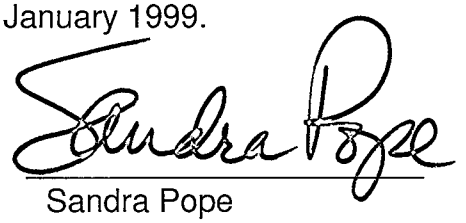
This allowed me to calculate the percentage share of educationals, networks and independents for both satellite and cable. The results are shown on P.S. Exhibit __(SP-5). Each section of the exhibit relates to one of the royalty years. For example, the first section shows the 1992 results. In cable, carriage of independents represents by far the largest share of the totals, while on satellite, the networks have the largest share. The pie charts on this exhibit show only the subscriber results. On cable, the independent stations represent at least 80% of all "subscriber instances" throughout the years, but in satellite, the independents decline from 55% to 45% of the "total subscriber" counts between 1992 and 1995. Similarly with royalties, independents represent around 95% of

the cable royalties in all years, but on the satellite side, independents' share of royalties declined from 73% to 67%.

Conversely, the numbers show that network carriage represents a much larger share of satellite subscribers and royalties than it does in cable. In cable, networks account for around 4% of royalties, while in satellite, the network royalty share increased from 23% to 29% of the total. On the subscriber side, networks declined from 14% to 10% of the cable "subscriber instances," while over the same time period, the networks' share of satellite "total subscribers" rose from 38% to 49%. In terms of compensable carriage for royalty purposes, these numbers suggest that satellite subscribers have a far greater interest in obtaining network signals than do cable subscribers.

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge.

Executed this 7th day of January 1999.



Sandra Pope

P.S. EXHIBIT _____

Old form SC. 4 mos.
New form SC - 2 mos.
1992/1

To Satellite Carriers

IMPORTANT ROYALTY RATE CHANGES

The 1991 Satellite Carrier Rate Adjustment Proceeding has been adopted by the Copyright Royalty Tribunal, [CRT Docket No. 91-3-SCRA] effective May 1,1992.

Since the new rate is effective during the accounting period, the 92/1 period will have two rate structures and will require the Satellite Carrier to file two (2) Statements of Account:

- Use the green Form SC for the months January, February, March, and April where the "old" rates will be in effect
  - $0.12 per subscriber per month for superstations
  - $0.03 per subscriber per month for network stations
- Use the black Form SC for the months May and June where the new rates are effective
  - For Superstations*
    - $0.1750 per subscriber per month, or
    - $0.14 per subscriber per month for "syndex-proof" signals
  - For Network Stations
    - $0.06 per subscriber per month

*Note: There is a new rate category for superstations. If the superstation qualifies for the "syndex-proof" rate, the rate is $0.14 per subscriber per month; if not, the rate is $0.1750. Satellite Carriers are also required to file an affidavit when they use the "syndex-proof" rate. For a further explanation of this requirement see page ii of the General Instructions in the Statement of Account.

(202) 707-8150
Copyright Office • Library of Congress • Licensing Division. Washington. D.C. 20557

ML-446

P.S. EXHIBIT _____

OFFICIAL BUSINESS
UNITED STATES COPYRIGHT OFFICE

Filing Deadline: The Statement of Account must be filed within 30 days after the last day of the accounting period. The filing deadline is July 30 for the January-June accounting period and January 30 for the July-December accounting period.

STATEMENT OF ACCOUNT
for Secondary Transmissions by SATELLITE CARRIERS FOR PRIVATE HOME VIEWING

General Instructions are at the end of this form [pages i-iii].

FOR COPYRIGHT OFFICE USE ONLY	
DATE RECEIVED	AMOUNT
	REMITTANCE NUMBER

FORM SC

Return to:
Licensing Division
Copyright Office
Library of Congress
Washington, DC 20557
(202) 707-8150

SPACE A

ACCOUNTING PERIOD COVERED BY THIS STATEMENT: (Check one box and fill in the year)

☐ January 1-June 30,_____ ☐ July 1-December 31,_____

SPACE B

LEGAL NAME OF SATELLITE CARRIER: Your file is established under this name. Give the full name of the owner of the satellite carrier. If the owner is a subsidiary of another corporation, give the full corporate title of the subsidiary, not that of the parent corporation.

LEGAL NAME OF OWNER OF SATELLITE CARRIER
BUSINESS NAME OF OWNER, IF DIFFERENT
MAILING ADDRESS

Give the legal name as it appears in Space B.

SPACE C

PRIMARY TRANSMITTERS: TELEVISION—In this area, please identify every **television broadcast station** carried by the SATELLITE CARRIER during this accounting period. **DO NOT** list program services such as HBO, ESPN, or CNN.

- **Column 1:** List each station's call sign.
- **Column 2:** Give the number of the channel on which the station's broadcasts are carried in its own community.
- **Column 3:** Indicate whether the station is a "superstation", "syndex-proof superstation", or a "network" station by entering the letter "S" (for superstation), "SP" (for syndex-proof superstation) or "N" (for network),. See page ii of the General Instructions for the meaning of these terms.
  IMPORTANT: You must file an affidavit for "syndex-proof" signals. For a further explanation of this requirement see page ii of the General Instructions.
- **Column 4:** Give the location of each station. This should be the community (city and state) to which the station is licensed by the FCC.

1. Call Sign	2. Channel Number	3. Station Type (S, SP, or N)	4. Location of Station

SPACE D—COPYRIGHT ROYALTY FEE

GENERAL: In this space, report the number of subscribers receiving each television broadcast station in Part 1 and then compute the total royalty fee due in Part 2. The subscriber information must be reported for **each month** of the accounting period. The stations should be grouped together according to whether they are "superstations", "syndex-proof superstations", or "network" stations as identified in Space C.

PART 1—CARRIAGE

- **FIRST:** Under the headings SUPERSTATIONS, SYNDEX-PROOF SUPERSTATIONS, and NETWORK STATIONS enter those stations' call signs and the number of subscribers receiving those stations on the last day of each month of the accounting period. Then, for each station, total the number of subscribers for all six months of the accounting period and enter that figure under the column labeled TOTAL.

- **NEXT:** Compute the grand total number of subscribers receiving "superstations", "syndex-proof superstations", and "network" stations.

Give the legal name as it appears in Space B.

SUPERSTATIONS

Call signs	SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD						Total
	Month 1 (Jan/July)	Month 2 (Feb/Aug)	Month 3 (Mar/Sept)	Month 4 (Apr/Oct)	Month 5 (May/Nov)	Month 6 (June/Dec)	
						Grand total "Superstations" subscribers:	

SYNDEX-PROOF SUPERSTATIONS

Call signs	SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD						Total
	Month 1 (Jan/July)	Month 2 (Feb/Aug)	Month 3 (Mar/Sept)	Month 4 (Apr/Oct)	Month 5 (May/Nov)	Month 6 (June/Dec)	
						Grand total "Syndex-Proof Superstations" subscribers:	

NETWORK STATIONS

Call signs	SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD						Total
	Month 1 (Jan/July)	Month 2 (Feb/Aug)	Month 3 (Mar/Sept)	Month 4 (Apr/Oct)	Month 5 (May/Nov)	Month 6 (June/Dec)	
						Grand total "Network" stations subscribers:	

PART 2—COMPUTATION OF THE ROYALTY FEE

1. Enter the grand total "Superstations" subscribers here and multiply by $0.1750 .... _____ x .1750 = $ _____

2. Enter the grand total "Syndex-Proof Superstations" subscribers here and multiply by $0.14 ..... _____ x .14 = $ _____

3. Enter the grand total "Network" stations subscribers here and multiply by $0.06 ..... _____ x .06 = $ _____

4. Interest Charge. Enter the amount from line 4, Space E, page 4 ..... $ _____

5. Add Lines 1, 2, 3, and 4. This is the satellite carrier's total royalty fee ..... $

Remit this amount in the form of a certified check, cashier's check, or money order payable to the Register of Copyrights; or electronic payment. Do not send cash.

Give the legal name as it appears in Space B.

SPACE E—WORKSHEET FOR COMPUTING INTEREST

You must complete this worksheet for those royalty fee payments submitted as a result of a late payment or underpayment. For an explanation of interest assessment, see page (iii) General Instructions.

Line 1. Enter the amount of late payment or underpayment ..... $_____
x_____%

Line 2. Multiply line 1 by the interest rate*
and enter the sum here. ..... _____
x_____days

Line 3. Multiply line 2 by the number of days late ..... _____
x.00274

Line 4. Multiply line 3 by .00274**. Enter the amount here
(unless $5.00 or less) and on line 4, part 2,
space D, (page 3) ..... $_____
(interest charge)

*Contact the Licensing Division at (202)707-8150 for the interest rate for the accounting period in which the late payment or underpayment occurred.

**This is the decimal equivalent of 1/365, which is the interest assessment for one day late.

NOTE: If you are filing this worksheet covering a Statement of Account already submitted to the Copyright Office, please list below the Owner, Address, and Accounting Period as given in the original filing.

_____
_____
_____

SPACE F— Identify an individual to whom we can write or call about this Statement of Account:

_____(____)_____
NAME TELEPHONE NUMBER

MAILING ADDRESS
.....
.....
.....

SPACE G—The Statement of Account must be signed in accordance with Copyright Office regulations.

I, the undersigned Owner or Agent of the Satellite Carrier, or Officer or Partner, if the Satellite Carrier is a corporation or partnership, have examined this Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith. [18 U.S.C., Section 1001(1986)]

.....
HANDWRITTEN SIGNATURE
.....
TYPED OR PRINTED NAME
.....
TITLE OR CAPACITY
.....
.....
DATE

General Instructions

Satellite Carriers and the Copyright Law (P.L. 100-667)

Satellite carriers are subject to copyright liability for their use of copyrighted material when they make "secondary transmissions" (retransmissions of television broadcasts) to the public for private home viewing and they make a direct or indirect charge for that service. Satellite carrier retransmissions of the copyrighted programming embodied in the signals of superstations or network stations are eligible under an optional system of statutory licensing, that is established in section 119 of the Copyright Act. Should a satellite carrier choose to obtain a statutory license to retransmit the signals of superstations or network stations to the public for private home viewing, twice a year the satellite carrier must deposit a Statement of Account and a royalty fee with the Licensing Division of the Copyright Office.

How to File the Statement of Account and Royalty Fee

First: Study the general information on these pages and the instructions in the Statement of Account form itself.

Second: Fill out the Statement of Account form, giving all of the required information about your satellite carrier and about the television stations carried by it. Use a typewriter, or print the information in dark ink. If you need more space, indicate that a continuation sheet is attached and use a blank page for that purpose.

Third: Certify the Statement of Account by signing at space G.

Fourth: Obtain a **certified check, cashier's check, or money order, or make an electronic payment** (see **Note** below) in the amount you have calculated in space D, to cover the copyright royalty fee. Payment in any other form (such as personal or company checks) **will be returned.** The remittance should be payable to: Register of Copyrights; or electronic payment. Do not send cash.

Fifth: Send the completed Statement of Account, together with all continuation sheets, and the Copyright royalty fee, to: Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

Sixth: The Copyright Office will retain your Statement of Account and make it a part of its public records. You should therefore keep a copy of the entire Statement as filed, in case you need it for further reference.

Note: Royalty fee payments may be made by using the United States Treasury Fedwire Deposit System. For detailed instructions concerning electronic payments, contact the Licensing Division for **Circular 74. IMPORTANT**—Where the royalty fee is remitted by electronic payment, the related Statement of Account must be filed by the appropriate deadline. Statement of Account and electronic funds transfer received after the filing deadline are subject to interest assessment.

How the Statutory License Works

In general, having a statutory license means that a satellite carrier can retransmit the signals of superstations and, in some instances, network stations without violating the copyright law, as long as it complies with certain statutory requirements.

- The satellite carrier can, without negotiated licenses or advance permission from copyright owners, retransmit the signals of any "superstation" to any members of the public, and retransmit the signals of any network station to persons who reside in unserved households, so long as the retransmission is intended for private home viewing and the carrier makes a direct or indirect charge to each household receiving the signals (or to a distributor, in the case of a carrier of superstations).
- The satellite carrier must file semiannual Statements of Account with the Copyright Office and must also deposit at the same time semiannual royalty payments. Where the royalty fee is made by electronic payment, the related Statement of Account must be filed by the appropriate deadline accompanied with a cover letter. The amount of the royalty, which is initially established by the statute, depends on the number of subscribers to each signal delivered by the carrier each month. The royalty should be paid by certified check, cashier's check or money order payable to: Register of Copyrights; or electronic payment.
- Any satellite carrier that retransmits the signals of a network station to unserved households must, on April 1, 1989, or 90 days after commencing such retransmission, whichever is later, submit to the network that owns or is affiliated with that station a list identifying (by street address, including county and zip code) all subscribers to that service. Then, on the 15th of each month, the satellite carrier must submit to the network a list so identifying any persons who have been added or dropped as subscribers since the last list was submitted. The carrier should contact the Licensing Division of the Copyright Office to determine the name and address of the network contact person to whom the subscriber list should be submitted.
- The networks should submit to the Licensing Division of the Copyright Office the name and address of a contact person to whom subscriber lists should be submitted by satellite carriers that retransmit a signal of a station owned or affiliated with that network.

Why Having A Statutory License Is Important

Most television broadcasts contain copyrighted programming. Without a statutory license, a satellite carrier that

scrambles the signal of a braodcast station and retransmits the signal to home dish owners for a fee either has to negotiate licenses for all copyrighted programming it retransmits or runs the risk of substantial civil (or, in some cases, criminal) liability for multiple acts of copyright infringement.

Who Can Obtain A Statutory License

Under the statute, the retransmission of a "superstation" is subject to statutory licensing only if it is made by a "satellite carrier" to the public for "private home viewing" and the carrier makes a direct or indirect charge to the subscriber or to a distributor of the "superstation."

The retransmission of a "network station" is subject to statutory licensing under the same circumstances with the additional requirement that the carrier must retransmit the network station only to "unserved households."

If a satellite carrier has contracted with a distributor to market the carrier's retransmission service to the viewing public or otherwise act as an agent of the carrier, it is still the responsibility of the satellite carrier (and *not* the distributor) to obtain a statutory license for the retransmission service. If a cable system engages in distributorship activities on behalf of a satellite carrier, the cable system/distributor should segregate the subscription fees collected on behalf of the satellite carrier from those collected from cable subscribers pursuant to the section 111 cable compulsory license. The cable system should only report in its section 111 Statements of Account the number of cable subscribers served and the amount of gross receipts collected pursuant to section 111, and should pay only royalties pursuant to the requirements of section 111.

- A **"satellite carrier"** is defined as "an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing."

- A **"superstation"** is defined as "a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier."

- **"Private home viewing"** is defined as "the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission."

- A **"subscriber"** is defined as "an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor."

- A **"network station"** is defined as "a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of that station's typical broadcast day," including "any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station." This definition applies, at the present time, exclusively to those stations owned by or affiliated with the three major commercial networks (ABC, CBS, and NBC). The status of the Public Broadcasting Service is technically unclear under the law. The Copyright Office is inclined, based on comments submitted by the Public Broadcasting Service, to treat member stations of the Public Broadcasting Service in the same manner as "network" stations until this is resolved.

- A **"distributor"** is defined as "an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities."

- An **"unserved household"** is defined as "a household that (a) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and (b) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

- A **"syndex-proof superstation"** is defined as a broadcast signal retransmitted by a satellite carrier where "during any semiannual reporting period, the retransmission does not include any programs which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission.

- **AFFIDAVIT** For all superstations reported by a satellite carrier as "syndex-proof," the carrier must include with its filing an affidavit affirming that the signa identified as "syndex-proof" have carried no progran ming which would be subject to claims of cable syndicated exclusivity during the six month period covered by the statement of account.

What a Compulsory License Does Not Permit You to Do

The statutory authority given to satellite carriers to retransmit television broadcasts under a statutory license is limited in several ways:

- **Program Alteration or Commercial Substitution.** Satellite carriers are not permitted to alter the content of retransmitted programs, or to change, delete, or substitute commercials or station announcements in or adjacent to programs being carried, or to combine the programs with programming from any other broadcast signal.
- **Geographic Limitation on Retransmissions.** Satellite carriers are not permitted to retransmit signals to households that are not located in the United States (the United States includes its territories, trust possessions, and possessions).
- **Unserved Households.** To repeat: satellite carriers are not permitted to retransmit the signals of network stations to households that are *not* "unserved households."

Accounting Periods

The statute establishes two six-month accounting periods for purposes of computing the royalty fee and reporting the information called for in the Statement of Account. The first semiannual period runs from January through June, and the second from July through December, of each calendar year. You must use these accounting periods whether or not they coincide with the beginning or ending of your satellite carrier's fiscal year.

Filing Dates

Satellite carriers are given 30 days after the close of each accounting period in which to file their Statements of Account and royalty fees:

- For the January-June accounting period:
  File between July 1 and July 30, inclusive;
- For the July-December accounting period:
  File between January 1 and January 30, inclusive.

Statements of Account and royalty fees received before the end of the accounting period will not be accepted. Statements and fees received after the July 30 or January 30 deadlines will be accepted for whatever legal effect they may have, if any. The Copyright Office takes no position as to what this effect will be, and a satellite carrier that files late runs a substantial risk of copyright infringement.

Interest Charges for Underpayments and Late Payments

Underpayments or late payments received after the filing deadline shall be subject to an interest assessment. Satellite carriers must calculate their own interest charge. (A worksheet is provided at space E, page 4.) The interest rate set for a specific accounting period is determined by the interest rate paid by the United States Treasury on the first investment of royalty fees made by the Copyright Office with the U.S. Treasury after the close of that accounting period. Satellite carriers may obtain the interest rate for the applicable accounting period(s) by contacting the Licensing Division.

For underpayments and late payments the interest shall be compounded annually and begin to accrue on the first day after the close of the filing date for that accounting period. For a late payment the accrual period ends on the date that the Statement of Account and proper form of payment are received in the Copyright Office. For underpayments the accrual period ends on the date appearing on the certified check, cashier's check, money order, or electronic payment, provided that the remittance is received in the Copyright Office within five business days of that date. **Note:** The Office shall not require, nor notify a satellite carrier of an interest charge of $5.00 or less.

Refunds

Refund requests must be received within 30 days after the close of the filing period (by March 1 or August 29). Contact the Licensing Division for additional information.

PRIVACY ACT ADVISORY STATEMENT—(Required by Privacy Act of 1974 [Public Law 93-579)

Authority for Requesting This Information:
- Title 17 U.S.C. §119

Furnishing This Information is:
- Voluntary

But If the Information is Not Furnished:
- It may be necessary to delay placement of this Statement of Account in the completed record of Statements of Account
- You may be liable for civil or criminal penalties for copyright infringement with respect to retransmission of television stations (17 U.S.C. §§502-506, 509-510)

Principal Uses of Requested Information:
- Preparation of detailed reports to the Copyright Royalty Tribunal
- Establishment and maintenance of a public record
- Examination of the Statement of Account for compliance with legal requirement

Other Routine Uses:
- Public inspection and copying
- Preparation of public indexes
- Preparation of search reports upon request

Note:
- No other advisory statement will be given you in connection with this Statement of Account
- Please retain this statement and refer to it if we communicate with you regarding this Statement of Account

P.S. Exhibit ____ (SP-1)

P.S. Exhibit No. (SP-1)

STATIONS CARRIED IN EACH ACCOUNTING PERIOD, 1992-1995

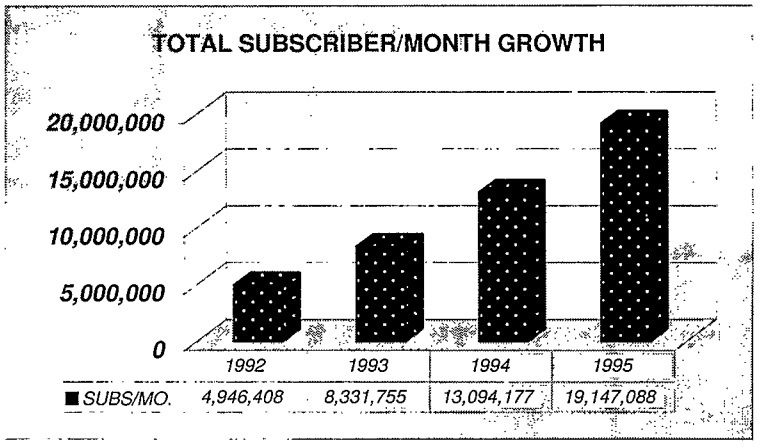
1992/1		1992/2		1993/1		1993/2		1994/1		1994/2		1994/2		1995/1		1995/2	
KCNC	N	KCNC	N	KCNC	N	KCNC	N	KCNC	N	KCNC	N	KCNC	N	KCNC	N	KCNC	N
								KDVR	SS	KDVR	N	KDVR	N	KDVR	N	KDVR	N
KMGH	N	KMGH	N	KMGH	N	KMGH	N	KMGH	N	KMGH	N	KMGH	N	KMGH	N	KMGH	N
										KNBC	N	KNBC	N	KNBC	N	KNBC	N
										KOMO	N	KOMO	N	KOMO	N	KOMO	N
										KPIX	N	KPIX	N	KPIX	N	KPIX	N
KRMA	E	KRMA	E	KRMA	E	KRMA	E	KRMA	E	KRMA	E	KRMA	E	KRMA	E	KRMA	E
KTLA	SS	KTLA	SS	KTLA	SS	KTLA	SS	KTLA	SS	KTLA	SS	KTLA	SS	KTLA	SS	KTLA	SS
KTVT	N	KTVT	N	KTVT	N	KTVT	N	KTVT	N	KTVT	N	KTVT	N				
KTVU	SS	KTVU	SS	KTVU	SS			KTVU	SS	KTVU	N	KTVU	N	KTVU	N	KTVU	N
KUSA	N	KUSA	N	KUSA	N	KUSA	N	KUSA	N	KUSA	N	KUSA	N	KUSA	N	KUSA	N
KWGN	SS	KWGN	SS	KWGN	SS	KWGN	SS	KWGN	SS	KWGN	SS	KWGN	SS	KWGN	SS	KWGN	SS
WABC	N	WABC	N	WABC	N	WABC	N	WABC	N	WABC	N	WABC	N	WABC	N	WABC	N
WBBM	N							WBZ	N	WBZ	N	WBZ	N				
										WFLD	N	WFLD	N	WFLD	N	WFLD	N
WGN	SP	WGN	SP	WGN	SP	WGN	SP	WGN	SP	WGN	SP	WGN	SP	WGN	SP	WGN	SP
														WHDH	N	WHDH	N
WHYY	E	WHYY	E	WHYY	E	WHYY	E	WHYY	E	WHYY	E	WHYY	E	WHYY	E	WHYY	E
																WNBC	N
WPIX	SS	WPIX	SS	WPIX	SS	WPIX	SS	WPIX	SS	WPIX	SS	WPIX	SS	WPIX	SS	WPIX	SS
								WPLG	N	WPLG	N	WPLG	N	WPLG	N	WPLG	N
WRAL	N	WRAL	N	WRAL	N	WRAL	N	WRAL	N	WRAL	N	WRAL	N	WRAL	N	WRAL	N
WSBK	SS	WSBK	SS	WSBK	SS	WSBK	SS	WSBK	SS	WSBK	SS	WSBK	SS	WSBK	SS	WSBK	SS
WTBS	SP	WTBS	SP	WTBS	SP	WTBS	SP	WTBS	SP	WTBS	SP	WTBS	SP	WTBS	SP	WTBS	SP
								WUSA	N	WUSA	N	WUSA	N	WUSA	N	WUSA	N
WWOR	SP	WWOR	SP	WWOR	SP	WWOR	SP	WWOR	SP	WWOR	SP	WWOR	SP	WWOR	SP	WWOR	SP
WXIA	N	WXIA	N	WXIA	N	WXIA	N	WXIA	N	WXIA	N	WXIA	N	WXIA	N	WXIA	N
No. of Stations Carried:	18		17		17		16		21		25		25		24		25

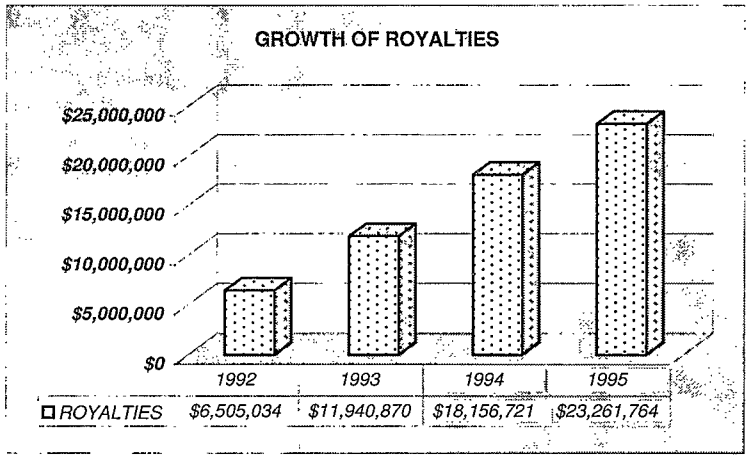
P.S. Exhibit ____ (SP-2)

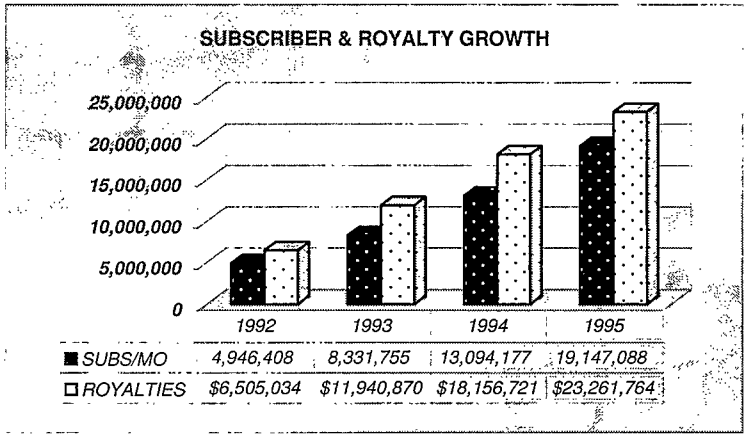
P.S. Exhibit No. (SP-2)

SUBSCRIBER AND ROYALTY GROWTH, 1992 - 1995

A/P	TYPE	TOTAL SUBS	TOTAL SUBS/MO	TOTAL ROYALTIES
92/1	E	1,542,205	257,034	$75,522
92/2	E	1,866,043	311,007	$137,754
92/1	N	10,195,308	1,699,218	$562,236
92/2	N	12,751,910	2,125,318	$972,251
92/1	SP	9,107,407	1,517,901	$1,158,929
92/2	SP	11,056,671	1,842,779	$1,555,784
92/1	SS	5,749,545	958,258	$802,193
92/2	SS	7,087,803	1,181,301	$1,240,366
1992	**TOTAL**	**59,356,892**	**4,946,408**	**$6,505,034**
93/1	E	2,325,604	387,601	$175,543
93/2	E	2,872,662	478,777	$216,111
93/1	N	16,922,455	2,820,409	$1,272,693
93/2	N	22,187,701	3,697,950	$1,663,079
93/1	SP	14,198,159	2,366,360	$1,996,686
93/2	SP	18,322,133	3,053,689	$2,565,099
93/1	SS	9,975,452	1,662,575	$1,745,704
93/2	SS	13,176,892	2,196,149	$2,305,956
1993	**TOTAL**	**99,981,058**	**8,331,755**	**$11,940,870**
94/1	E	3,232,528	538,755	$237,524
94/2	E	6,748,392	1,124,732	$404,904
94/1	N	27,384,581	4,564,097	$2,105,993
94/2	N	40,113,532	6,685,589	$3,140,811
94/1	SP	21,842,608	3,640,435	$3,057,965
94/2	SP	25,913,150	4,318,858	$3,627,841
94/1	SS	15,149,720	2,524,953	$2,651,201
94/2	SS	16,745,610	2,790,935	$2,930,482
1994	**TOTAL**	**157,130,121**	**13,094,177**	**$18,156,721**
95/1	E	5,997,193	999,532	$359,832
95/2	E	8,082,150	1,347,025	$484,929
95/1	N	51,305,090	8,550,848	$3,078,305
95/2	N	61,659,522	10,276,587	$3,699,571
95/1	SP	31,152,153	5,192,026	$4,361,301
95/2	SP	35,621,156	5,936,859	$4,986,962
95/1	SS	18,026,117	3,004,353	$3,154,570
95/2	SS	17,921,674	2,986,946	$3,136,293
1995	**TOTAL**	**229,765,055**	**19,147,088**	**$23,261,764**





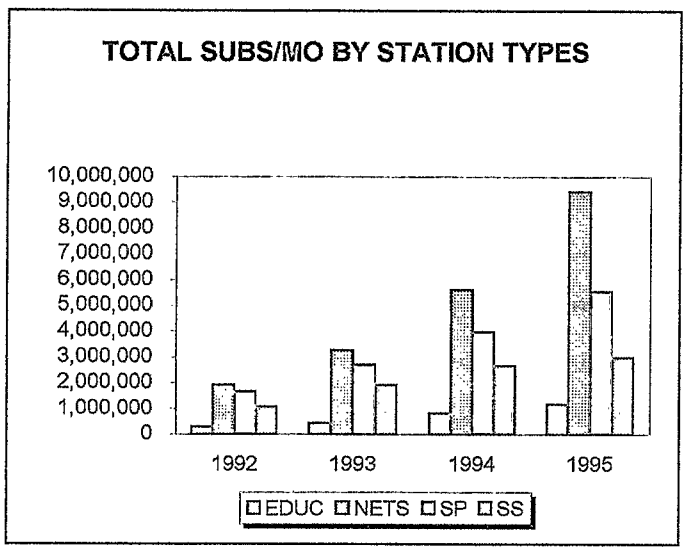


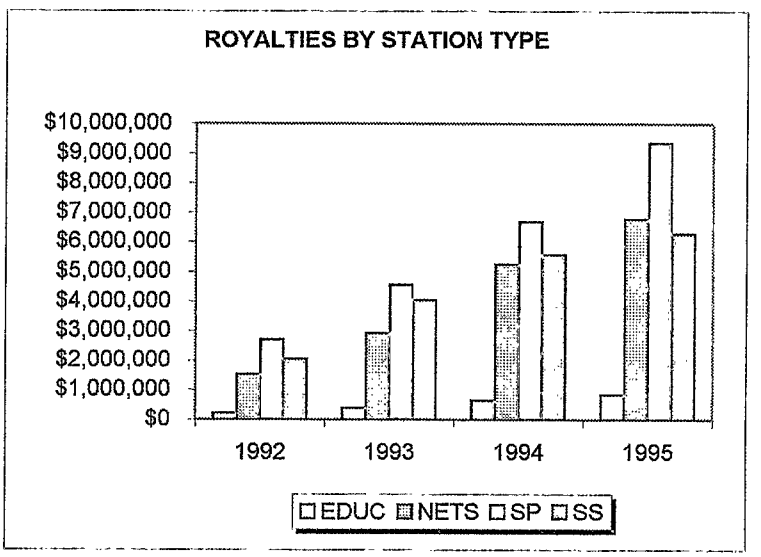
P.S. Exhibit ____ (SP-3)

Exhibit No. SP-3

SUBSCRIBERS AND ROYALTIES BY STATION TYPES, 1992 - 1995

STATION TYPE	YEAR	TOTAL SUBS	TOTAL SUBS/MO	TOTAL ROYALTIES
EDUC	1992	3,408,248	284,021	$213,276
	1993	5,198,266	433,189	$391,654
	1994	9,980,920	831,743	$642,427
	1995	14,079,343	1,173,279	$844,761
NETS	1992	22,947,218	1,912,268	$1,534,487
	1993	39,110,156	3,259,180	$2,935,772
	1994	67,498,113	5,624,843	$5,246,804
	1995	112,964,612	9,413,718	$6,777,877
SP	1992	20,164,078	1,680,340	$2,714,712
	1993	32,520,292	2,710,024	$4,561,784
	1994	47,755,758	3,979,647	$6,685,806
	1995	66,773,309	5,564,442	$9,348,263
SS	1992	12,837,348	1,069,779	$2,042,558
	1993	23,152,344	1,929,362	$4,051,660
	1994	31,895,330	2,657,944	$5,581,683
	1995	35,947,791	2,995,649	$6,290,863



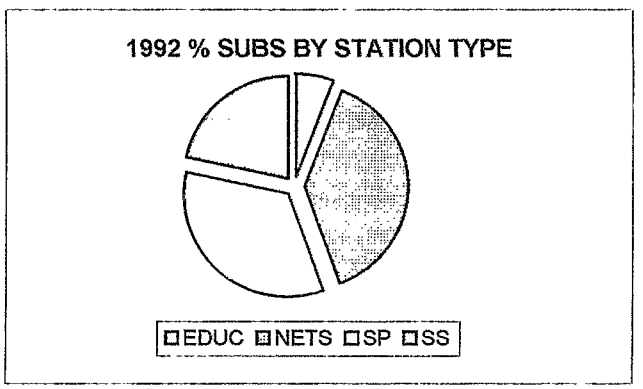


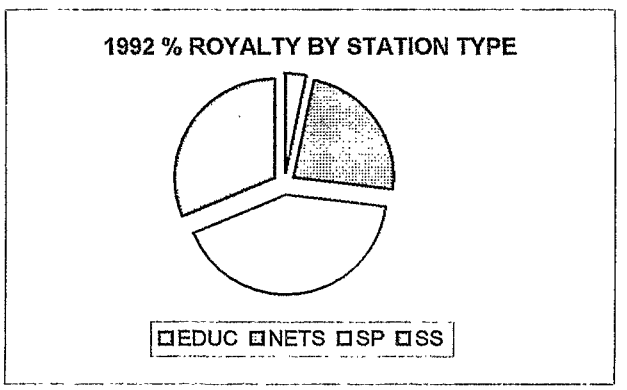
P.S. Exhibit ____ (SP-4)

P.S. Exhibit No. (SP-4)
(Page 1)

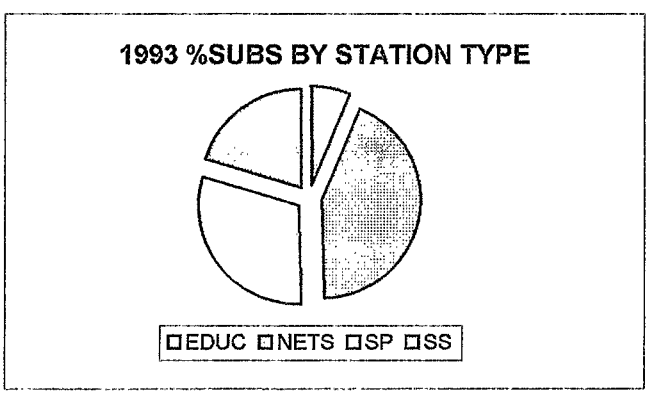
% SUBS & ROYALTIES BY STATION TYPE -1992-93

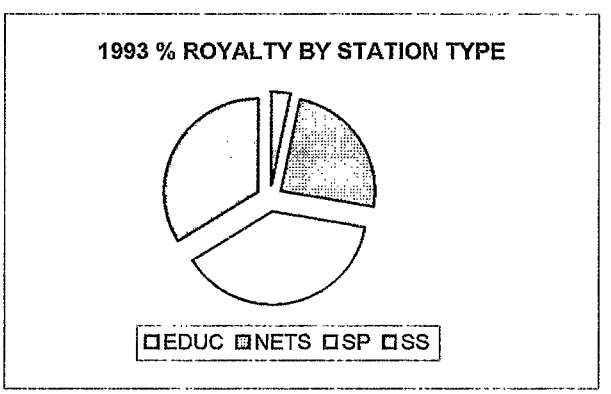
YEAR	STATION TYPE	% SUBS	% ROY
1992	EDUC	5.74%	3.28%
	NETS	38.66%	23.59%
	SP	33.97%	41.73%
	SS	21.63%	31.40%





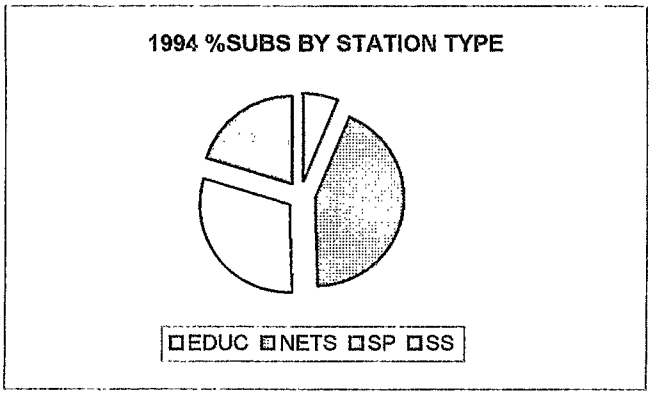
YEAR	STATION TYPE	% SUBS	% ROY
1993	EDUC	5.20%	3.28%
	NETS	39.12%	24.59%
	SP	32.53%	38.20%
	SS	23.16%	33.93%

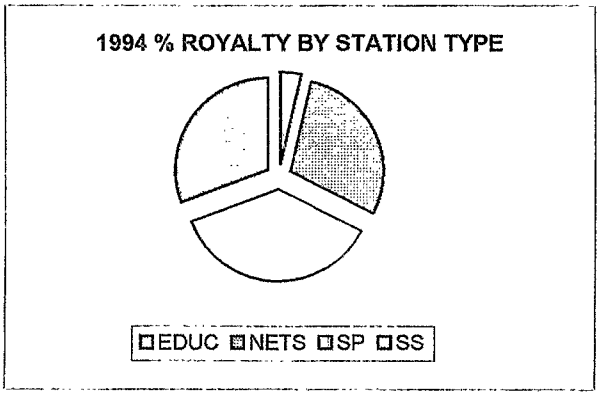




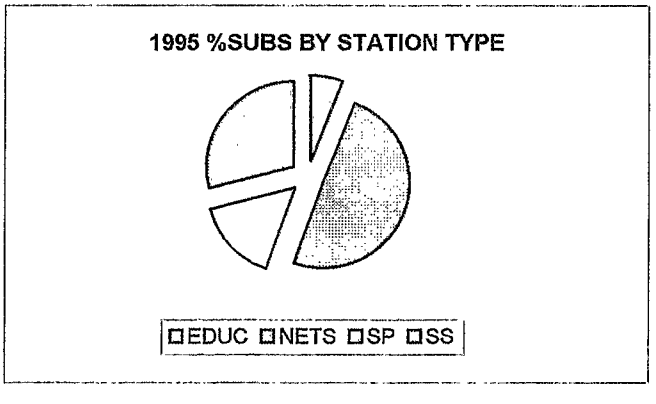
% SUBS & ROYALTIES BY STATION TYPE -1994-95

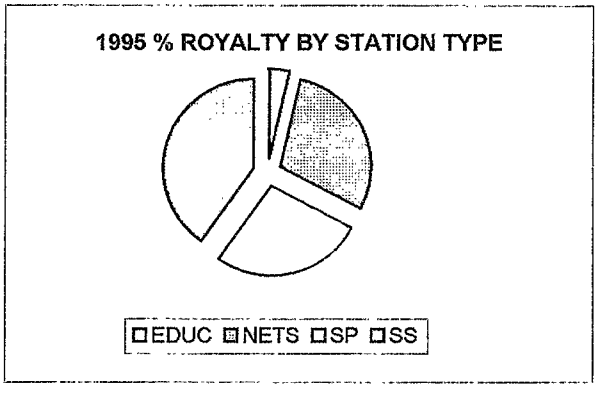
YEAR	STATION TYPE	% SUBS	% ROY
1994	EDUC	6.35%	3.54%
	NETS	42.96%	28.90%
	SP	30.39%	36.82%
	SS	20.30%	30.74%





YEAR	STATION TYPE	% SUBS	% ROY
1995	EDUC	6.13%	3.63%
	NETS	49.17%	29.14%
	SP	15.65%	27.04%
	SS	29.06%	40.19%





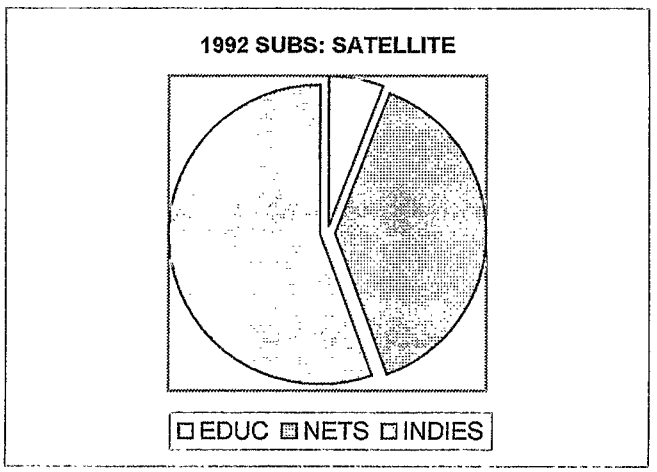
P.S. Exhibit ____ (SP-5)

SUBSCRIBER INSTANCES - SATELLITE V. CABLE, 1992-93

SATELLITE

1992

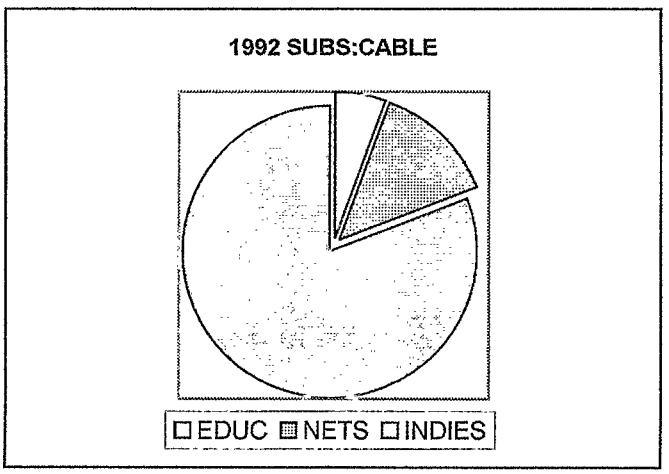
	SUBS	ROYALTY	% SUBS	% ROY
EDUC	3,408,248	$213,276	5.74%	3.28%
NETS	22,947,218	$1,534,487	38.66%	23.59%
INDIES	33,001,426	4,757,271	55.60%	73.13%
TOTAL	59,356,892	$6,505,034	100.00%	100.00%



CABLE

1992

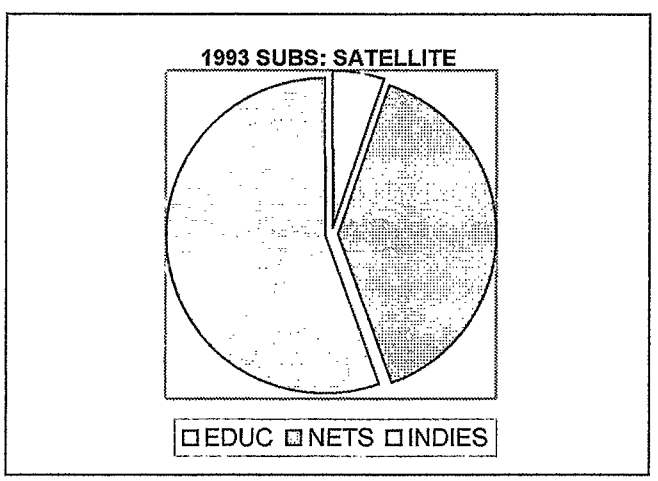
	SUBS	ROYALTY	% SUBS	% ROY
EDUC	13,308,177	$2,884,426	5.45%	1.61%
NETS	33,502,503	$7,972,160	13.71%	4.45%
INDIES	197,513,905	$168,441,848	80.84%	93.94%
TOTAL	244,324,585	$179,298,434	100.00%	100.00%



SATELLITE

1993

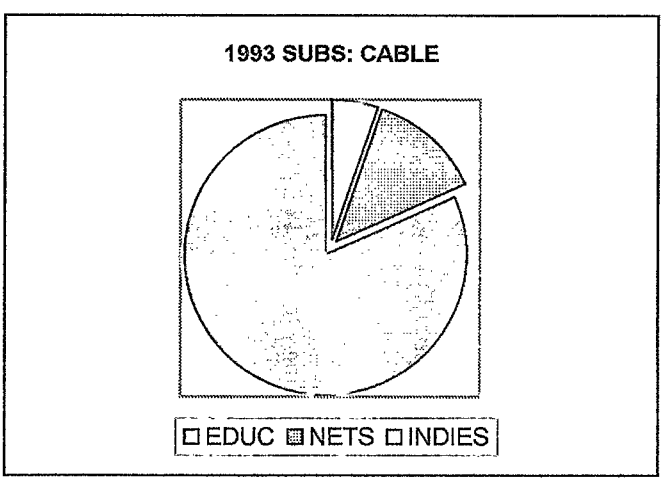
	SUBS	ROYALTY	% SUBS	% ROY
EDUC	5,198,266	$391,654	5.20%	3.28%
NETS	39,110,156	$2,935,772	39.12%	24.59%
INDIES	55,672,636	8,613,445	55.68%	72.13%
TOTAL	99,981,058	$11,940,871	100.00%	100.00%



CABLE

1993

	SUBS	ROYALTY	% SUBS	% ROY
EDUC	13,499,677	$2,695,334	5.36%	1.55%
NETS	32,996,250	$7,670,517	13.11%	4.41%
INDIES	205,240,822	$163,535,693	81.53%	94.04%
TOTAL	251,736,749	$173,901,544	100.00%	100.00%

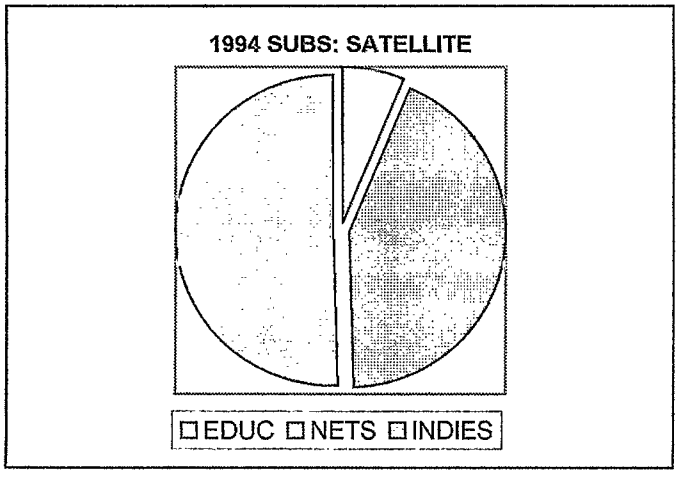


SUBSCRIBER INSTANCES - SATELLITE V. CABLE, 1994-95

SATELLITE

1994

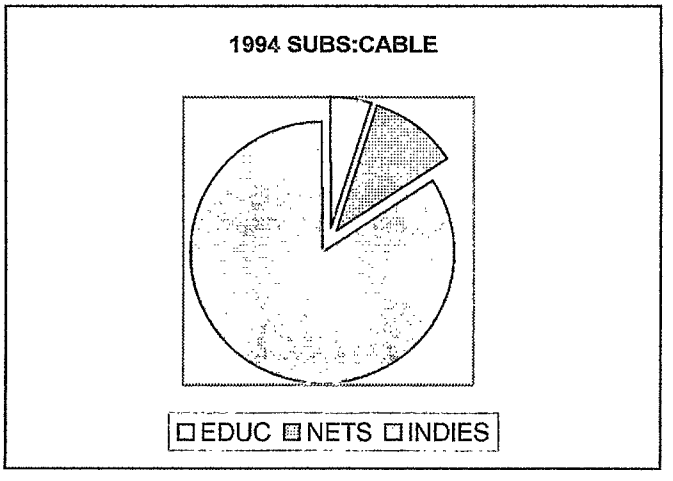
	SUBS	ROYALTY	% SUBS	% ROY
EDUC	9,980,920	$642,427	6.35%	3.54%
NETS	67,498,113	$5,246,804	42.96%	28.90%
INDIES	79,651,088	12,267,489	50.69%	67.56%
TOTAL	157,130,121	$18,156,720	100.00%	100.00%



CABLE

1994

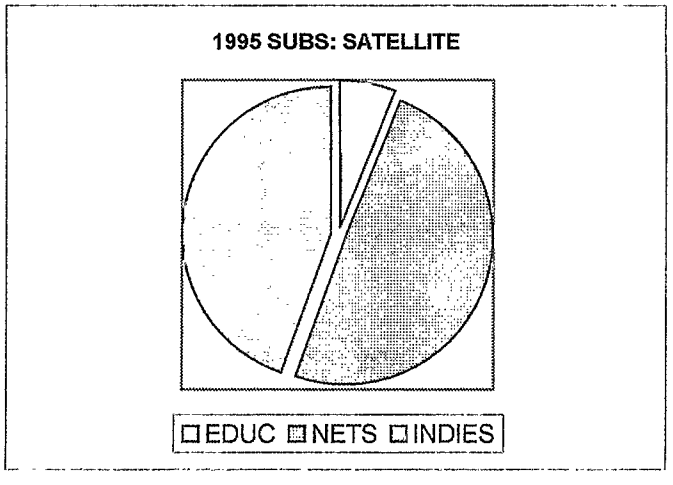
	SUBS	ROYALTY	% SUBS	% ROY
1994 EDUC	12,238,465	$2,063,440	5.05%	1.35%
NETS	26,095,512	$5,338,959	10.76%	3.50%
INDIES	204,118,733	$145,333,662	84.19%	95.15%
TOTAL	242,452,710	$152,736,061	100.00%	100.00%



SATELLITE

1995

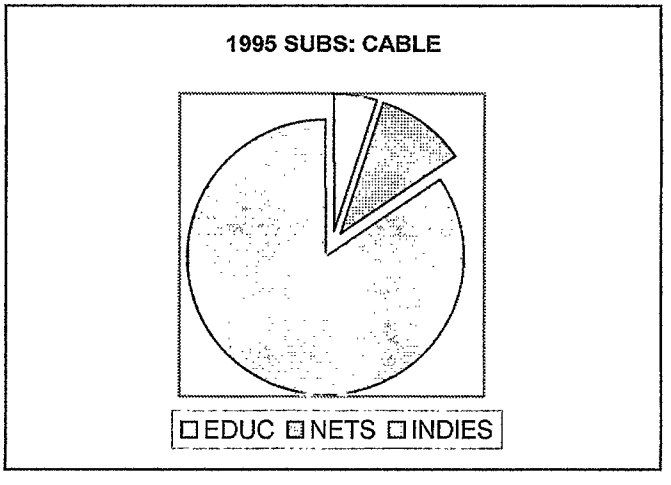
	SUBS	ROYALTY	% SUBS	% ROY
EDUC	14,079,343	$844,761	6.13%	3.63%
NETS	112,964,612	$6,777,877	49.17%	29.14%
INDIES	102,721,100	$15,639,127	44.71%	67.23%
TOTAL	229,765,055	$23,261,765	100.00%	100.00%



CABLE

1995

	SUBS	ROYALTY	% SUBS	% ROY
EDUC	12,465,050	$2,131,145	5.06%	1.36%
NETS	25,757,252	$5,406,435	10.46%	3.44%
INDIES	207,984,793	$149,524,593	84.48%	95.20%
TOTAL	246,207,095	$157,062,173	100.00%	100.00%



TESTIMONY OF LEONARD KALCHEIM BEFORE THE COPYRIGHT ROYALTY ARBITRATION PANEL

INTRODUCTION AND BACKGROUND

My name is Leonard Kalcheim. I am self-employed and currently represent a number of entertainment and television clients on various business and legal matters. I hold degrees from Cornell University (Bachelor of Arts – Government) and Columbia Law School (Doctor of Jurisprudence) and I am a former Captain in the U.S. Army, Intelligence & Security.

After two years in a staff position at the Federal Trade Commission, I started my career in the field of television in 1968 in New York City as an attorney in the News Division of the American Broadcasting Company (ABC). I was involved in legal matters related to the nightly network news, the daily electronic feed of news stories to affiliated stations and the production of documentary and religious programming.

In 1971, I began what was to be a 15-year job at Paramount Pictures Corporation. Starting in the legal department, my duties included documenting rights acquisition of completed theatrical feature films and/or elements of films then in production and licensing theatrical films to the then three primary broadcast networks (ABC, CBS, NBC).

My responsibilities shifted in 1974 to television syndication (i.e., the licensing of programming by producer/suppliers like Paramount to individual television stations on a market-by-market basis throughout this country.) As a department head, I was responsible for negotiating, drafting (or the supervision of drafting) all program licensing agreements with television stations. Programs then offered by Paramount included film packages (i.e. groups of theatrical or made-for-television feature films that were no longer in theatrical distribution or subject to network exclusivity) and series (i.e. programs consisting of multiple episodes with essentially the same cast such as Star Trek or Happy Days).

I was promoted to Vice President in 1979 and transferred to Los Angeles. There I took on the additional responsibilities of business affairs for the production of Paramount's "first-run" programs, i.e. programs that are first produced for concurrent exhibition by individual stations in different markets throughout the country. These shows included short-lived series like Make Me Laugh, mini-series like Golda, and the more successful programs like Solid Gold and Entertainment Tonight. During this period, I was also involved in licensing Paramount's feature films to the then emerging pay cable services like HBO and Showtime as well as releasing those films into home video distribution.

From 1986 to 1991, I was head of business affairs for Qintex Entertainment where I had similar responsibilities to those at Paramount. I

negotiated the rights agreements for the development, production and/or acquisition of programming and the licensing of such programming into syndication. During this period, Qintex produced made-for-television feature films like Mayflower Madam and Night They Saved Christmas and the company acquired and licensed television series like Lonesome Dove.

Since 1992, I have been involved in the production end of direct response marketing (infomercials), i.e. programming that offers goods for direct sale from the marketer to the viewing public. During this time, I have been associated with companies such as King World Direct, Kent & Speigel and Guthy Renker Corporation with respect to marketing health and beauty products, self-improvement books and tapes, entertainment and educational audio and videotapes and athletic equipment.

The execution of my responsibilities in the above-mentioned positions has required an ongoing knowledge of the television broadcast industry and the relationship between planned costs and expected revenues.

I shall focus my comments in two broad areas: the creation and distribution of programming and the valuation of programming.

CREATION AND DISTRIBUTION OF PROGRAMMING

How Stations Obtain Programs

When I use the term "programming" (or "shows") I am referring to a body of material that comes to a viewer via a television set. In the context of these hearings we are talking about material embodied in the electronic signal of a television broadcast station (for example WSBK in Boston, or WRAL in Raleigh) which is simultaneously retransmitted by satellite carriers to subscribers who pay a fee to receive a station's signal.

There are various ways television stations acquire their programming. The ABC, CBS, NBC and Fox affiliates obtain a large portion of their programming from their parent networks. This type of programming is produced for national consumption and is released throughout the country on the basis of one-affiliate-per-market for use at the same time and on the same day(s) of the week. Network affiliates commit to broadcast blocs of programming (several hours per day) from the originating network in the course of each week.

Another source of programming for affiliates, and to a lesser degree for independent stations, is programming that the stations produce themselves. This programming is essentially for consumption in the stations' local markets. Examples of these programs include the station's own news programs, local high

school sporting events, pre- and post-game shows, and telecasts of happenings of local interest (such as a parade).

A third major source of programming for stations, particularly independents, is syndicated programming. It may be useful to define some forms of syndicated programming, which is individual programming form producer-suppliers like Paramount that is licensed separately to individual television stations on a market-by-market basis for use by those stations in accordance with the terms of the licensing arrangements.

- film packages: groups of theatrical or made-for-television feature films (i.e. movies) that are no longer in theatrical distribution or subject to network exclusivity and thus are available for license by stations around the country;

- television series: programming that consists of multiple episodes with essentially the same cast of characters, such as Star Trek or Friends;

- first-run television programming: programming that is produced for concurrent exhibition by individual stations in different markets throughout the country, generally for exhibition, at least initially, in mutually agreed upon time periods.

What Is Syndicated Programming?

Syndicated programming includes former network series, groups of theatrical motion pictures and just about any other programming. Stations acquire this programming on a program-by-program or single package basis and are given exclusive rights to broadcast that program in their local markets. With respect to series, a station usually acquires a multi-year license for multiple exhibitions (i.e., "runs") of each episode in the series. In contrast to the network practice of broadcasting the same program at the same time on all affiliates, programming in syndication is normally licensed for broadcast at times chosen by the licensing station.

A growing segment of programming is of the first-run category defined above. First-run programming includes, among others, game shows such as Jeopardy, talk shows like Oprah, and magazine programs such as Entertainment Tonight. Another active area of first-run syndication is children's programming.

This broad array of available syndicated programming allows each station to choose its own schedule, from time to time to add and/or to delete programming as circumstances dictate. Factors involved in these decisions include: the audience levels achieved; the cost of the programming; and, the revenues derived from broadcasting the program. These decisions are made against a background of what audience levels its competition (local television

stations and cable systems) is achieving with their programming. It is an ever-shifting scene.

Despite the numerous and diverse types of syndicated programs, they all start from the same place: an idea! Ideas for programs come all in shapes and sizes. They may be in the form of a dramatic plot outline, or a comedic script, or use of a live personality, or a game concept, or a general intent to inform, educate or entertain about specific areas of interest, like home repairs or cooking or wild animals. Ideas originate almost anywhere – from established producers or from newcomers, from local stations or national networks, from people inside or people outside the industry. While some ideas are developed solely for television, others come to television fully developed from another medium, such as a theatrical motion picture or a live concert.

The idea must, however, be transformed into a program that can generate the desired television viewing. This transformation requires money to pay for all the necessary steps involved in the production process. Like any other business idea, a would-be funding party will only give the needed financial support after concluding that the expected revenues from the finished program will exceed the costs of production. In short, no one is in the television production business to lose money.

In the case of a program that is produced for initial broadcast by one of the commercial networks, the profit-loss calculation begins with the reality that revenues from the initial network runs will not recoup the development and production costs. Consequently, the producer relies on the hope that the program will go into syndication after the network run and that he will be able to recoup his costs in this fashion.

I say *hope* because the risks in investing in development and then production are great. Most ideas never get to the production stage, and of the ideas that are produced, most never achieve the necessary level of production (generally considered to be around 100 episodes of a series) to go into syndication. Even if a program meets the necessary qualifications for syndication, its success on the network may not translate into success in syndication. As a result, some program producers have several pilot programs going at the same time, all of which show a loss, in the hope that one will succeed as a successful syndicated program. This one success will be needed to recoup the production and development costs of all of the unsuccessful pilots. Expected revenues from syndication are part of the business calculation in deciding whether to go forward with production of a program and what the production budget will be.

Developing The Program

To explain the process, let's take an example of a simple production for network television. Assume a writer takes a program concept to an independent producer who is experienced in producing television series, and the producer agrees to develop the idea. At this point, a business arrangement will be worked out between the two parties which would establish, among other things, a period of time in which the producer must obtain funding as well as the compensation and further involvement, if any, of the writer.

During this development period, the original concept may be modified based on an ongoing assessment of how the concept can best be presented in a cost-effective manner. At some point along the way, the producer will have developed the program concept into, perhaps, a full script of the first episode and an outline of further episodes. He also will have identified a director, a head writer, a major actor or a group of actors to be a part of the program.

Program concepts tend to run in cycles so that new program concepts are often judged by what has been successful previously in the same genre of programming. For example, a successful family comedy focusing on contemporary problems will be imitated in other family comedies. This can be seen if one were to trace the similarities between All In The Family, Family Ties, The Jeffersons, and The Cosby Show. Likewise, we find similarities in detective mystery programs or game shows or "work place" comedies.

Successful programs also are derived from what has been successful in other areas of our culture. One example would be the series, The Odd Couple, which was derived from characters in a successful theatrical motion picture of the same name. The characters in The Simpsons originated in a successful comic strip. The game show, Hollywood Squares is based on the child's game of tic tac toe. The flip side of this story is that other program types – for example, westerns and variety shows – may fall out of favor with audiences. Programs that cannot attract sufficient audiences will no longer be produced (at least until they come back into favor).

At the point when the concept has been sufficiently developed, the producer will present it to a potential funding party to determine whether there is sufficient interest for the party to fund further development. The funding party might be a major studio, a network or an independent film company. If the first party approached is not interested, the producer will go to other potential funding parties. Along the way, the producer may modify the developed concept or change personnel to satisfy a new funding party. Shopping for a funder continues until the producer finds a party willing to fund the program. Or until the producer gives up!

While my example involves an independent producer, some of the larger production companies have their own creative departments whose mission is to develop program concepts worthy of production. For these in-house departments, the steps from idea to program production are the same, except that they occur within the company.

Obtaining Program Funding

The decision to fund an initial pilot program and then additional episodes is based on an expectation that the concept can be converted into an entertaining show on a cost-effective basis. This expectation is, in turn, based on a belief that the program can attract large enough audiences initially, and that through further runs, the networks and later individual stations will be willing to pay sufficient license fees to allow the producer to recoup costs and make a profit.

The producer and the networks (or the individual stations) engage in considerable discussion about the expected audience for the program. After a period of discussion, debate and deliberation, the network/stations make a decision to fund or not to fund. Obviously, if a network decides it is not interested, then the program being developed for network broadcast will not go forward. In similar fashion, unless enough individual stations make a commitment to license a first-run syndication program, it will not go forward.

Once the funding party has obtained a sufficient commitment from the network or stations, an initial production commitment is made. This may be for as little for one program, known as a "pilot," or for as much as a whole season's worth of episodes. If only a pilot is made, then the parties go through another similar evaluation of whether the pilot shows enough promise to warrant production of further episodes.

It is becoming more frequent that networks will commit to only a small number of episodes initially (to find out whether the program will be a success) rather than ordering a full season's run. The networks rarely pay a license fee that covers more than a fraction of the production and development costs. The funding party in television production is the one who is responsible for the costs of production, so it is the funding party who takes the financial risks associated with the program. In return, the funding party usually becomes the copyright owner of the completed programming and is free to market the show as he deems appropriate.

Developing A Program Budget

Once there is an expectation of financial support, the producer will translate the anticipated funding into a budget for the pilot (and perhaps for additional episodes). The budget serves as a starting point with modifications

being made after a financial commitment has been given. Most budget issues involve a choice between giving a "quality look" to the show (which costs money) and producing the program on a "cost effective" basis (which minimizes production expenses). Needless to say, these are two very subjective and conflicting concepts. The producer constantly evaluates both considerations as he assembles the numerous elements needed to create a program -- the cast, the set, the facilities, the technical crew, sound, picture, editing and so forth.

One major budget factor is compensation for the principal performers, the director and perhaps the writers. Generally, these parties enter a contractual arrangement that includes a series of successive options for their services over an extended period. The options avoid having to negotiate new terms each time the production is extended. Compensation is usually on a flat fee-per-episode basis paid over the course of production. Performers will also receive "residuals," that is, contingent compensation each time the program is aired beyond the initial run. The rate of the residuals is set by collective bargaining agreements and represents a cost that must be paid each time a program is aired in syndication. In addition, talent highly valued by the producer might receive a share of any profits that a program ultimately achieves.

Other budget considerations are the production facility and the technical crew. These rates are highly negotiable. The negotiation process serves to minimize misunderstandings that could slow or otherwise impede the production schedule. Generally, contracts for the production facility and crew specify a minimum daily production schedule (in hours) along with equipment requirements (e.g. number and type of cameras, microphones and tape stock). Additional charges are applied for extra time or duties that occur.

The Production Process

Actual production time varies greatly. A weekly half-hour comedy may be taped after two days of on-set rehearsals. Each scene and each piece of dialogue may be shot (i.e., taped) several times using two or more cameras that cover different angles and distances. A daily game show may tape five shows per day for two successive days and then be on hiatus for two weeks. The hiatus gives the producer time to edit those shows before they are aired and time for the staff to prepare for production of the next ten shows. Magazine shows may tape program segments over a period of time in non-studio locations and only shoot the segment introductions in the studio as needed.

After the elements of the show have been taped, the program goes into "post production." The amount of refinement depends on the time and money available. During post-production, the director (and sometimes the producer) decides which taped segments will be used and precisely where each segment will start and end. Dialogue is adjusted to a consistent sound level throughout the episode and sound effects (e.g. applause, laughter, etc.) and music are

added. The show is then formatted into prearranged segments with room provided for commercials to be inserted at a later time. Series programs, including advertisements, are usually tailored to fill either a 30- or 60-minute time slot. Movies may run from 90 to 120 minutes or longer.

Some programs, like daily magazine shows (e.g., Entertainment Tonight), are broadcast the day of the taping, with the field segments no older than a few hours. Post-production editing is necessarily minimal in such cases. Other programming, like network situation comedies, may be in post-production for several weeks.

Delivering The Program

After production is finished, a tape of the completed episode is then physically delivered to the network. The network adds the national advertisements that it has sold for inclusion in that program and then distributes the finished product to its affiliates via satellite. Syndicated programs (usually preformatted to allow for insertion of commercials by individual stations) are delivered to local stations either via tape or satellite delivery.

Satellite delivery of the program to the station is becoming the preferred delivery system for both first-run and other syndicated series and movies. With increasing frequency, the program is up-linked to a satellite from which all the licensing stations around the country downlink (retrieve) the program on their receiving dishes. Depending on whether the program is live or taped as well as on contractual arrangements, a receiving station may immediately broadcast the show or delay broadcast until a later time.

New series, whether on a network or in syndication, are generally available to start in the fall when vacations are over and children are back in school. In order to meet this schedule, syndicated program producers need production approval by November or December, so that the pilot can be made and ready for demonstration to potential licensees (that is, television station executives) during January and February. A program must be licensed in a sufficiently large number of markets, traditionally the magic number is 70% of all television households, by April or May for the program to go forward. This schedule allows producers/stations/networks (depending on whether it is a syndicated or a network program) adequate time to line up advertisers for the programming and for production of additional episodes over the summer so that the series is ready to begin broadcasts by September.

Production schedules have been changing in recent years as networks and individual stations have become less likely to commit to new programs for an entire year. If the actual audience for a program is less than expected, programming will be modified in an effort to improve the viewing audience. If those efforts fail, that program will be replaced by another within a few weeks.

These replacement programs may be first ordered for production at any time from November to April.

Compensation For Syndicated Programs

Compensation paid by the station to the program supplier for syndicated programming may take one of three forms: cash, barter or a combination of cash and barter. I will describe each method.

- **Cash**. The total license fee is paid in cash by a licensing station to the program supplier in 24 or 30 equal consecutive monthly installments. The terms of a cash license normally include the right to broadcast each episode of a series or each motion picture in a package multiple times during the course of the license period. The station is free to air the program on any dates it chooses as long as the number of broadcasts doesn't exceed the number agreed to in the contract. The station retains all advertising spots in the programming and can sell those spots to anyone and at any price. The station's only obligations are to make timely payments and to return the tapes at the end of the term. If a series is popular, the parties will often extend the term and license additional runs. The flexibility offered by a cash license allows stations to build up an inventory of available programming that they can use as their needs and circumstances require.

- **Barter**. The station does not pay a cash fee to the program supplier. Instead, the supplier delivers each episode of a series with approximately 50% of advertising spots in each episode. In barter arrangements, the program supplier shares with the station the risk of being able to sell the advertising spots. The supplier's revenues for the program come from the sale of those retained spots. Generally speaking, the program supplier must license the program to stations whose collective coverage is at least 70% of the television households in the country. This is the minimum level of national clearance that advertisers who are seeking nation-wide audiences require before they will purchase time on the program. The station derives its revenues from sales, primarily to local advertisers, of the remaining spots. In barter deals, the station is obligated to broadcast each episode at a specific time on a specific date(s).

- **Cash/Barter**. The licensing station pays a lesser fee than in a cash deal and gives the program supplier less than 50% of the advertising spots on the program. Many successful first-run and off-network syndicated series are initially licensed on a cash-barter basis.

These simple descriptions do not do justice to the complexity and fluidity of the entire syndication process. In particular, decisions regarding the

placement of advertising from large national companies are often made in the context of very complex dynamics involving multiple products being advertised in multiple dayparts of weekly schedules. Stations and program suppliers sometimes seek to renegotiate changes in their contractual relationship whenever the economics and the contract warrant. A series that is successful in the initial syndication term will allow the program supplier to seek higher license fees or, in the case of barter, more advertising spots in subsequent licensing negotiations. Conversely, if the show fails to get the expected ratings, the station may cancel the program or move it to a less desirable time slot with smaller audiences. The station may try to reduce the existing license fee. If the program license is renewed in these circumstances, the fees will be lower.

Why Viewing Is Important

Advertisers "buy' their audiences by placing their commercials in programs 1) to reach a desired kind of audience (e.g. children), and 2) to reach that audience in sufficient numbers. The advertiser makes a judgment based on the known users of its product(s) – the target audience – and then selects spots on a program whose audience includes a large number of viewers in the target audience. The cost of the advertising is based on the expected viewer level (measured by the ratings), using a cost-per-thousand viewers rate.

Initial advertising fees are established based on the size of the expected audience. The parties make periodic adjustments to align the fees with the actual audience. When the actual audience level is lower than expected, the advertiser may call on the station to provide additional spots, known as a "make goods," to deliver the audience that was originally expected and the anticipated level of payment.

Expected audience measurements are derived from a combination of experience with the program, with the station, with the day part and with competing programs on other stations. Stations "sell audiences" to advertisers based on prior ratings that a program has received in similar situations. In order to attract advertising dollars, a station or network will license the best programs available based on what programs are available, the cost, the competition, and other factors. The sale of programs and advertising on those programs is a highly competitive business.

As we have seen, there are four business components involved in television programming: the creator/producer, the copyright holder/funding party, the delivery system (local broadcasters or networks), and advertisers. Each element is free to negotiate compensation in an open, competitive marketplace. If a program is to succeed, all four elements must be involved. Each entity must decide that the rewards of continued association with the program will be greater than the costs.

While none of these parties controls the outcome, they all recognize and accept that the success of a given program depends on the viewers who make the decision whether or not to watch. It is the viewers who determine whether a program is successful and, by choosing to watch in sufficiently large numbers, how successful the program will be. The audience is, has been, and always will be the real driving force, the currency, of television.

The Growth of the Syndication Market During 1992-95

Demand for syndicated programming increased among all parts of the television and cable industry during the 1992 – 1995 period. As shown in P.S. Exhibit (LK-1), revenues from syndicated programs broadcast by network affiliates rose from $731 million to $846 million (a $115 million, or 16%, increase), while revenues from syndicated programs carried by independent stations rose from $1.098 billion in 1992 to $1.271 billion in 1995 (a 16% increase of $173 million). Revenues from barter syndication grew at a 26% pace, from $1.272 billion in 1992 to $1.6 billion in 1995, for an increase of $328 million. Finally, syndication revenues from cable networks climbed from $1.067 billion to $1.377 billion, an increase of $310 million (29%).

The growth in all areas confirms that syndicated programming is valued by all segments of the industry. As shown on P.S. Exhibit (LK-2), the relative size of licensing fees from each segment remained constant throughout the period. Network affiliates accounted for roughly 17% of the total syndication revenues during 1992-95; independent stations: 26%; barter: 31%, and cable networks: 26%. This consistency indicates the importance attached to syndicated programming by all delivery systems in the television and cable industry.

It is important to spend a moment to discuss how revenues are generated in barter syndication. As I mentioned earlier, barter is a "non-cash" exchange between a syndicator and a station or cable network. In these exchanges, a syndicator furnishes the program and retains roughly half the advertiser spots in that program and the purchaser provides a place to broadcast and keeps the other half of the advertising spots. While no cash changes hands between the syndicator and purchaser, each of them obtains cash revenues in the form of advertising revenues from the sale of its retained advertising spots.

This approach has appeal to both parties. For a station or cable network, barter means that it does not have to spend cash for a program and does not take all the risk of the program being successful. Instead, both the syndicator and the station or cable network share the risk that they can sell their retained advertising spots. For a syndicator, the advantage is the chance to capitalize if a program is successful on a nation-wide basis by selling its retained spots to national advertisers at a higher amount than it might have received from licensing the program on a station-by-station basis. In effect, barter allows a syndicator to

create a de facto national market for its program, and thus open the program to higher advertising revenues for national spots. This is why syndicators need to cover at least 70% of the national audience to make a barter program successful.

The increasing value of barter syndication in the 1992-95 period was seen in its yearly increases in revenues of over $100 million. For some types of programs, barter was even more important. For example, *Broadcasting and Cable* (April 4, 1994) p. 27, reported that barter for sitcoms quadrupled from $25 million in the 1988-89 season to $100 million in both the 1992-93 and 1993-94 seasons.

Some programs improve with age, as their audience levels (as represented by ratings) may increase in subsequent syndication cycles. The market value of these programs (which are known in the industry as "evergreens") is enhanced by reason of the improved cash a station is willing to pay for licensing rights and by reason of the increased cash an advertiser will pay to reach the higher audience levels that these programs reach. Two examples of increasing value involve *M*A*S*H*, whose per episode value rose from $250,000 in 1979 to $900,000 in 1985 to $1.1 million in 1989, and Cheers whose license fees rose from $1.3 million per episode in its first cycle to $2.3 million in its second cycle. *Broadcasting and Cable* (April 4, 1994) pp. 15 and 18.

VALUATION OF PROGRAMMING FOR APPORTIONMENT OF SATELLITE CARRIER ROYALTIES

As explained above, the value of television programming is determined in an open, competitive market place that depends ultimately on the viewing audience. This marketplace is self-policing in that comparatively lower-viewed programming quickly loses advertising, broadcasting and production support, while highly-viewed programming commands greater compensation at each level.

This is the first proceeding in which a Panel has been called upon to apportion the satellite carrier royalty fund amongst those claimants whose programming was broadcast by stations whose signals were retransmitted by satellite carriers. It is my understanding that the prior satellite carrier distribution proceeding was settled by the parties. The royalty fund originates from satellite carriers who are obligated to pay a per-subscriber fee for each station purchased by subscribers. Because satellite delivery is available anywhere in the country, subscribers can receive a station's signal clearly regardless of whether the viewer is located in a major urban center or in a sparsely-populated rural community.

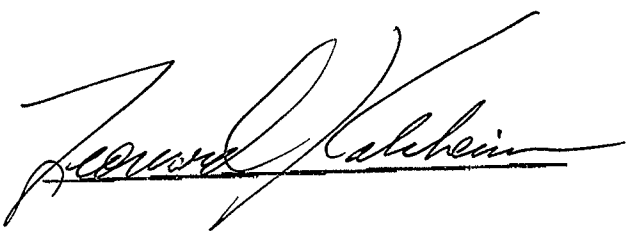
In addition to bringing television station signals to their subscribers, satellite carriers offered a variety of non-broadcast cable networks (such as, ESPN, CNN, MTV, regional sports networks, HBO and others) that can be

purchased by subscribers. In attempting to establish a fair and consistent way to allocate the fees payable to the copyright holders of television station programming retransmitted by satellite carriers, it should be remembered that the entire programming industry is driven by audience delivery. As my testimony has shown, programming has value only so long as it can attract viewers. The ability to attract viewers will entice stations and cable networks (who during the 1990s became more important buyers of syndicated programming) to license programming.

In a free market, each program would find its own value based on competitive market conditions, and satellite carriers would have to pay the marketplace rate for their use of programs. The compulsory license prevents individual programs from finding their own value in the satellite carrier marketplace. In a free market, value would be derived ultimately from the satellite carrier audiences that each program would attract. There is no reason why a similar evaluation cannot be used in apportioning satellite carrier royalties among copyright holders. Payments should be apportioned on the basis of comparative audience levels by tabulating the viewing of satellite carrier subscribers on a program-by-program basis, much the same way that payments are apportioned in the free market. This approach has the added advantage in that there is no need to make any subjective judgment as to whether one program or one type of program is more valuable than another is. The marketplace determines as it does in the rest of the communications industry.

I appreciate the opportunity to appear before this Panel and I hope that you find the material I have presented useful in your deliberations.

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge. Executed on January 5th, 1999.



P.S. Exhibit ____ (LK-1)

PS EXHIBIT __ (LK-1)

SYNDICATION REVENUE 1992-95 ($ in millions)

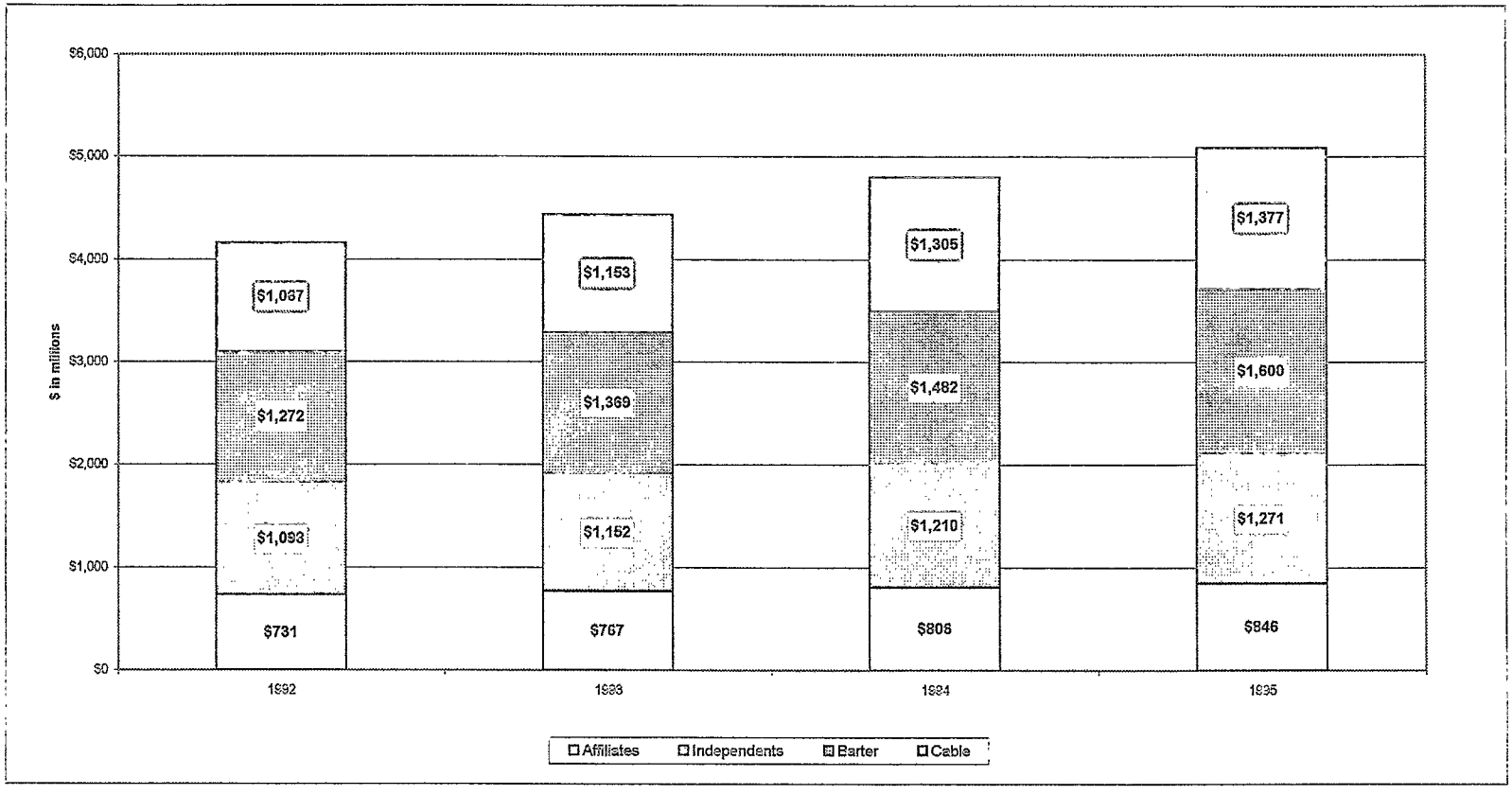
(Source: Paul Kagan Associates, Inc., *The Economics of TV Programming and Syndication*, 1996, at 168)

REVENUE SOURCES:

	1992	1993	1994	1995	Total
Affiliates	$731	$767	$806	$846	$3,150
Independents	$1,098	$1,152	$1,210	$1,271	$4,731
Barter	$1,272	$1,369	$1,482	$1,600	$5,723
Cable	$1,067	$1,153	$1,305	$1,377	$4,902
Total	$4,168	$4,441	$4,803	$5,094	$18,506

GROWTH RATES FROM 1992 TO 1995

	1992	1993	1994	1995	1992-95 Period
Affiliates	0%	4.92%	5.08%	4.96%	16%
Independent	0%	4.92%	5.03%	5.04%	16%
Barter	0%	7.63%	8.25%	7.96%	26%
Cable	0%	8.06%	13.18%	5.52%	29%
Overall	0%	6.55%	8.15%	6.06%	22%



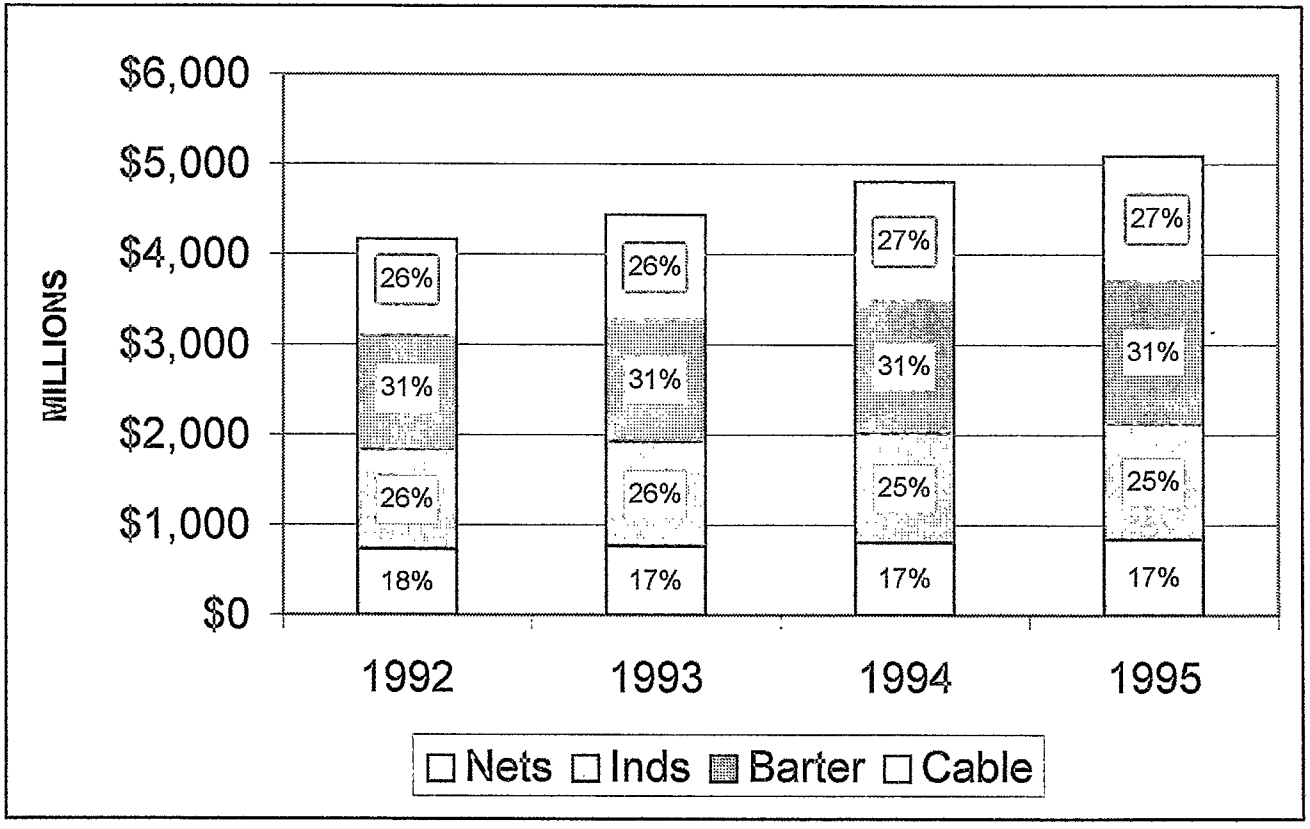
P.S. Exhibit ____ (LK-2)

PS EXHIBIT ____
(LK-2)

SYNDICATION REVENUE 1992-95 (in millions)

BREAKDOWN BY PERCENTAGE OF EACH REVENUE SEGMENT TO TOTAL REVENUE

(Source: Paul Kagan Associates, Inc., *The Economics of TV Programming and Syndication*, 1996, at 168)



PS EXHIBIT __
(LK-2)

REVISED
JANUARY 21, 1999

TESTIMONY OF LINDA MCLAUGHLIN

I. QUALIFICATIONS AND SUMMARY

I am an economist and a Vice President of National Economic Research Associates, Inc. I have conducted research on broadcast, cable and satellite television and copyright licensing issues for more than twenty years. I testified in the 1996 Satellite Royalty Adjustment Proceeding. Other recent research projects include the likely performance of a start-up satellite service, the effect of proposed FCC rules concerning cable rates and broadcast television network-affiliate relations, the competitive impact of cable system advertising representative agreements, and the characteristics of local television stations added to cable systems as a result of the must-carry law. A detailed statement of my qualifications is set out in Attachment A.

Counsel for the MPAA asked me to determine a reasonable method for splitting the pool of 1992-95 satellite retransmission fees remaining to be divided[1] between Joint Sports Claimants (JSC), the rightsholders of certain live professional and college sports telecasts, and Program Suppliers (PS), the producers of network and syndicated entertainment and news programs and movies.

I conclude that the fees should be split based on satellite consumers' demand for the two categories of programs. The bulk of the satellite fees during the relevant time period accrued because individual C-Band satellite dish households chose to subscribe to particular retransmitted stations from the many packages and individual basic networks and retransmitted broadcast stations available to them from different distributors. The best available benchmark of the satellite households' demand for JSC and PS programming is the relative amount they pay for twelve sports and movies-series-news basic networks popular in satellite homes. The result is a split of 20% for JSC and 80% for PS.

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[1] After other claimants' negotiated settlement and the syndex portion (as explained in Marsha Kessler's testimony and exhibits) have been removed.

II. ANALYSIS

In this section, I explain why I use the relative price of popular basic networks to split the remaining satellite retransmission fees.

- First, the royalties should be split based on demand for each programming type. Satellite retransmission is a secondary market for programming. Prices in such secondary markets are based on programming demand, not the cost to the programmer of supplying the programming to the primary market.
- The relevant demand is that of the satellite households. During 1992-95, the satellite retransmitted stations were primarily purchased by C-Band satellite dish owners who can express their demand for programming by selecting particular channels.
- All retransmitted stations consist of a bundle of JSC and PS programming. We know the share of viewing hours devoted to JSC and PS programming, but we do not know exactly the relative value placed on time spent viewing JSC or PS programming.
- We can see that relative value in the price satellite households pay for basic network programming. Popular basic networks are devoted to individual program types that satellite homes can buy separately. The split of viewing on these networks between sports and series-movies-news programming is similar to the split of viewing on satellite retransmitted stations between JSC and PS programming. Because the viewing split is similar, the relative prices paid by satellite homes for the two different types of basic networks provide a benchmark for the relative value of JSC and PS programming.

A. Importance of Demand

Satellite retransmission is a secondary market for the JSC and PS programmers. These programmers commonly sell secondary program rights: sports leagues sell out-of-market football and basketball games to satellite homes[2], movie distributors sell theatrical motion pictures to television networks, TV syndicators sell re-runs of network series to local stations. Prices in secondary markets are based primarily on the demand for the programming in those markets. The only supply-side consideration in most secondary markets is the typically small additional cost of distribution.

B. Demand by C-Band Satellite Dish Homes

In general, there are two types of satellite homes: those using the older C-Band dishes and the newer DBS dishes. C-Band homes have large (e.g., eight-foot) satellite dishes and purchase programming uplinked on various satellites through one or more packagers. DBS homes have small (18 to 36-inch dishes) dishes focussed on a single satellite and purchase retransmitted stations, basic networks and other programming from a single DBS operator (DirecTV or PrimeStar during 1992-95).

As shown on Table 1, C-Band homes accounted for the vast majority of potential purchasers of satellite retransmitted stations in 1992-95. DirecTV, did not begin operations until June 1994; PrimeStar had relatively few subscribers until 1995. Even in 1995, about two-thirds of satellite subscribers were C-Band subscribers, and about one-third DBS subscribers.

C-Band homes also accounted for the vast majority of the actual purchases of satellite retransmitted stations. For example, more than 90 percent of WTBS subscribers were C-Band homes in 1992-94 and more than 60 percent were C-Band homes in 1995.[3]

---

[2] "Satellite Sports: Stealthy Sidebar?", *Variety*, January 12-19, 1995, p. 33.

[3] In 1992-95, three carriers retransmitted WTBS: SSS (all years) for C-Band homes and PrimeStar (all years) and DirecTV (1994-95) for their own DBS subscribers. The percentage calculation is based on subscriber fees compiled by Cable Data Corporation.

C-Band homes can purchase retransmitted stations and basic networks in a variety of ways from a number of different satellite distributors. Distributors offer a variety of packages and add-ons; several offer individual channels that allow the households to create their own custom packages. In the C-Band marketplace, consumers can choose the particular channels they want. In this competitive environment, distributors have every incentive to offer the most popular channels in their packages. Whether the homes choose a package, individual channels or add-ons, it is primarily the household who decides what channels to buy.

C. Behavior of C-Band Satellite Dish Homes

The behavior of satellite homes as revealed in the available data tells us something about their demand for JSC and PS programming on the retransmitted stations. From their viewing behavior, we know that they consistently spend far more time viewing PS programming than JSC programming: 90 percent of the satellite households' JSC and PS viewing hours is devoted to PS programming and 10 percent to JSC programming, with little year-to-year variation. (See Table 2.). While viewing is not a perfect indicator of value,[4] programming that is highly viewed, as a general matter, is highly valued.

Satellite homes do not have the opportunity to purchase JSC and PS programming separately on retransmitted stations. All of the retransmitted stations available to satellite homes contain both JSC and PS programming.[5] In fact, the superstations are described as programming for serious movie viewers, sports fans *and* the entire family.[6] The prices charged for the individual stations are generally the same[7] although the relative amount or viewing of JSC and PS programming may differ.

---

[4] For example, a household could watch two programs but value one more highly.

[5] The decision to uplink a particular station, and thus make it available to satellite homes, is based on demand for the stations by cable and satellite homes. During the 1992-95 period, cable homes were 90 percent or more of these potential subscribers. FCC, *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, December 31, 1997, Table E-1.

[6] "Sample Packages", *Satellite Orbit*, February, 1993, p. 17.

[7] Where the prices are not the same, they are not consistent across distributors. For example, in September 1994, All Networks Programming charged a monthly fee of $0.98 for WGN and $1.23 for WTBS (on a quarterly basis) while Galaxy Services Group charged $1.09 for each of these retransmitted stations.

C-Band satellite dish homes, however, do have the opportunity to buy separately basic networks devoted to particular programming types, such as sports, news, movies, etc. There are twelve basic networks that are popular in satellite homes and contain sports, news, movies and series. [8] One of these is the sports network ESPN, which contains JSC programming.[9] The eleven others consist of the news networks CNN, Headline News and CNBC, and eight networks featuring movies and series programming: A&E, CMT, Cartoon, Discovery, Family, Lifetime, The Nashville Network and USA. The programming on these eleven networks is the same type of PS programming broadcast by satellite-retransmitted television stations. Based on ratings in the homes that have each service,[10] the movies-series-news networks account for almost 90 percent of the viewing and the sports network accounts for just over 10 percent. (See Table 3.) This is a package of programming with viewing percentages similar to the PS and JSC programming in the retransmitted stations, with the advantage, for our purposes, that we can observe separate prices for each type of programming. The combined price of the twelve network package to C-Band homes, when each channel is purchased individually, is shown on Table 4A (monthly prices) and 4B (annual prices). The movies-series-news networks account for about 80 percent of the combined price and the sports network accounts for about 20 percent.

The approximate 80-20 split between movies-series-news and sports programming prices for the twelve basic networks provides a reasonable estimate for the relative value of JSC and PS programming on the retransmitted networks.

---

[8] In addition to superstations, there are 14 basic networks included in the popular package offered by the largest satellite distributor, Superstar, in each year during 1993-1995. Two of these networks are unrated: AMC and Bravo, movie networks with classic and art films. They were omitted because they could not be used in determining relative viewing shares for sports and movies-series-news programming for the package of networks. In 1992, Superstar's package did not include ESPN and two other networks included in later years. Data for 1992 were omitted because Superstar did not include a rated sports network.

[9] ESPN2 was generally sold to satellite homes together with ESPN in 1994 and 1995; it is included as a sports network in those years.

[10] These homes include cable as well as satellite homes. I understand that ratings in satellite homes alone are not available for individual basic networks.

TESTIMONY OF LINDA MCLAUGHLIN

I. QUALIFICATIONS AND SUMMARY

I am an economist and a Vice President of National Economic Research Associates, Inc. I have conducted research on broadcast, cable and satellite television and copyright licensing issues for more than twenty years. I testified in the 1996 Satellite Royalty Adjustment Proceeding. Other recent research projects include the likely performance of a start-up satellite service, the effect of proposed FCC rules concerning cable rates and broadcast television network-affiliate relations, the competitive impact of cable system advertising representative agreements, and the characteristics of local television stations added to cable systems as a result of the must-carry law. A detailed statement of my qualifications is set out in Attachment A.

Counsel for the MPAA asked me to determine a reasonable method for splitting the pool of 1992-95 satellite retransmission fees remaining to be divided[1] between Joint Sports Claimants (JSC), the rightsholders of certain live professional and college sports telecasts, and Program Suppliers (PS), the producers of network and syndicated entertainment and news programs and movies.

I conclude that the fees should be split based on satellite consumers' demand for the two categories of programs. The bulk of the satellite fees during the relevant time period accrued because individual C-Band satellite dish households chose to subscribe to particular retransmitted stations from the many packages and individual basic networks and retransmitted broadcast stations available to them from different distributors. The best available benchmark of the satellite households' demand for JSC and PS programming is the relative amount they pay for thirteen sports and movies-series-news basic networks popular in satellite homes. The result is a split of 20% for JSC and 80% for PS.

[1] After other claimants' negotiated settlement and the syndex portion (as explained in Marsha Kessler's testimony and exhibits) have been removed.

II. ANALYSIS

In this section, I explain why I use the relative price of popular basic networks to split the remaining satellite retransmission fees.

- First, the royalties should be split based on demand for each programming type. Satellite retransmission is a secondary market for programming. Prices in such secondary markets are based on programming demand, not the cost to the programmer of supplying the programming to the primary market.
- The relevant demand is that of the satellite households. During 1992-95, the satellite retransmitted stations were primarily purchased by C-Band satellite dish owners who can express their demand for programming by selecting particular channels.
- All retransmitted stations consist of a bundle of JSC and PS programming. We know the share of viewing hours devoted to JSC and PS programming, but we do not know exactly the relative value placed on time spent viewing JSC or PS programming.
- We can see that relative value in the price satellite households pay for basic network programming. Popular basic networks are devoted to individual program types that satellite homes can buy separately. The split of viewing on these networks between sports and series-movies-news programming is similar to the split of viewing on satellite retransmitted stations between JSC and PS programming. Because the viewing split is similar, the relative prices paid by satellite homes for the two different types of basic networks provide a benchmark for the relative value of JSC and PS programming.

A. Importance of Demand

Satellite retransmission is a secondary market for the JSC and PS programmers. These programmers commonly sell secondary program rights: sports leagues sell out-of-market football and basketball games to satellite homes[2], movie distributors sell theatrical motion pictures to television networks, TV syndicators sell re-runs of network series to local stations. Prices in secondary markets are based primarily on the demand for the programming in those markets. The only supply-side consideration in most secondary markets is the typically small additional cost of distribution.

B. Demand by C-Band Satellite Dish Homes

In general, there are two types of satellite homes: those using the older C-Band dishes and the newer DBS dishes. C-Band homes have large (e.g., eight-foot) satellite dishes and purchase programming uplinked on various satellites through one or more packagers. DBS homes have small (18 to 36-inch dishes) dishes focussed on a single satellite and purchase retransmitted stations, basic networks and other programming from a single DBS operator (DirecTV or PrimeStar during 1992-95).

As shown on Table 1, C-Band homes accounted for the vast majority of potential purchasers of satellite retransmitted stations in 1992-95. DirecTV, did not begin operations until June 1994; PrimeStar had relatively few subscribers until 1995. Even in 1995, about two-thirds of satellite subscribers were C-Band subscribers, and about one-third DBS subscribers.

C-Band homes also accounted for the vast majority of the actual purchases of satellite retransmitted stations. For example, more than 90 percent of WTBS subscribers were C-Band homes in 1992-94 and more than 60 percent were C-Band homes in 1995.[3]

---

[2] "Satellite Sports: Stealthy Sidebar?", *Variety*, January 12-19, 1995, p. 33.

[3] In 1992-95, three carriers retransmitted WTBS: SSS (all years) for C-Band homes and PrimeStar (all years) and DirecTV (1994-95) for their own DBS subscribers. The percentage calculation is based on subscriber fees compiled by Cable Data Corporation.

C-Band homes can purchase retransmitted stations and basic networks in a variety of ways from a number of different satellite distributors. Distributors offer a variety of packages and add-ons; several offer individual channels that allow the households to create their own custom packages. In the C-Band marketplace, consumers can choose the particular channels they want. In this competitive environment, distributors have every incentive to offer the most popular channels in their packages. Whether the homes choose a package, individual channels or add-ons, it is primarily the household who decides what channels to buy.

C. Behavior of C-Band Satellite Dish Homes

The behavior of satellite homes as revealed in the available data tells us something about their demand for JSC and PS programming on the retransmitted stations. From their viewing behavior, we know that they consistently spend far more time viewing PS programming than JSC programming: 90 percent of the satellite households JSC and PS viewing hours is devoted to PS programming and 10 percent to JSC programming, with little year-to-year variation. (See Table 2.). While viewing is not a perfect indicator of value,[4] programming that is highly viewed, as a general matter, is highly valued.

Satellite homes do not have the opportunity to purchase JSC and PS programming separately on retransmitted stations. All of the retransmitted stations available to satellite homes contain both JSC and PS programming.[5] In fact, the superstations are described as programming for serious movie viewers, sports fans *and* the entire family.[6] The prices charged for the individual stations are generally the same[7] although the relative amount or viewing of JSC and PS programming may differ.

---

[4] For example, a household could watch two programs but value one more highly.

[5] The decision to uplink a particular station, and thus make it available to satellite homes, is based on demand for the stations by cable and satellite homes. During the 1992-95 period, cable homes were 90 percent or more of these potential subscribers. FCC, *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, December 31, 1997, p. E-1.

[6] "Sample Packages", *Satellite Orbit*, February, 1993, p. 17.

[7] Where the prices are not the same, they are not consistent across distributors. For example, in September 1994, All Networks Programming charged a monthly fee of $0.98 for WGN and $1.23 for WTBS while Galaxy Services Group charged $1.09 for each of these retransmitted stations.

C-Band satellite dish homes, however, do have the opportunity to buy separately basic networks devoted to particular programming types, such as sports, news, movies, etc. There are thirteen basic networks that are popular in satellite homes and contain sports, news, movies and series.[8] One of these is the sports network ESPN, which contains JSC programming.[9] The twelve others consist of the news networks CNN, Headline News and CNBC, and eight networks featuring movies and series programming: A&E, CMT, Cartoon, Comedy, Discovery, Family, Lifetime, The Nashville Network and USA. The programming on these twelve networks is the same type of PS programming broadcast by satellite-retransmitted television stations. Based on ratings in the homes that have each service,[10] the movies-series-news networks account for almost 90 percent of the viewing and the sports network accounts for just over 10 percent. (See Table 3.) This is a package of programming with viewing percentages similar to the PS and JSC programming in the retransmitted stations, with the advantage, for our purposes, that we can observe separate prices for each type of programming. The combined price of the thirteen network package to C-Band homes, when each channel is purchased individually, is shown on Table 4A (monthly prices) and 4B (annual prices). The movies-series-news networks account for about 80 percent of the combined price and the sports network accounts for about 20 percent.

The approximate 80-20 split between movies-series-news and sports programming prices for the thirteen basic networks provides a reasonable estimate for the relative value of JSC and PS programming on the retransmitted networks.

---

[8] In addition to superstations, there are 15 basic networks included in the popular package offered by the largest satellite distributor, Superstar, in each year during 1993-1995. Two of these networks are unrated: AMC and Bravo, movie networks with classic and art films. They were omitted because they could not be used in determining relative viewing shares for sports and movies-series-news programming for the package of networks. In 1992, Superstar's package did not include ESPN and three other networks included in later years. Data for 1992 were omitted because Superstar did not include a rated sports network.

[9] ESPN2 was generally sold to satellite homes together with ESPN in 1994 and 1995; it is included as a sports network in those years.

[10] These homes include cable as well as satellite homes. I understand that ratings in satellite homes alone are not available for individual basic networks.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Jan. 6, 1999
Date

Signature

TABLE 1

TABLE 1

Direct Broadcast Satellite and C-Band Home Satellite Subscribers 1992-1995

Satellite Services	Average Annual Subscribers 1992	1993	1994	1995
	----------(000)----------			
DBS	nr	<70	203	1,297
C-Band	894	1,318	1,895	2,313
Total	894	1,388	2,098	3,610
Percent C-Band	100%	95%	90%	64%
Percent DBS	nr	5%	10%	36%

nr = not reported

Source: FCC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, December 11, 1995, pp. G1-G2 and 23, and December 26, 1996, p. 132.

TABLE 2

TABLE 2

PS and JSC Viewing in Satellite Homes
1992-1995

Programming Source	Household Viewing Hours				Average
	1992	1993	1994	1995	1992-95
Program Suppliers	87,575,327	142,168,972	191,967,006	322,728,005	
Joint Sports Claimants	9,509,669	16,902,733	21,228,353	32,895,967	
Total	97,084,996	159,071,705	213,195,359	355,623,972	
Percent PS	90%	89%	90%	91%	90%
Percent JSC	10%	11%	10%	9%	10%

Source: Nielsen Special Study.

TABLE 3

REVISED 1/21/99
TABLE 3

Ratings of Popular Networks, by Programming Type
1993-1995

Programming Type	Popular Networks	Total-Day Ratings [1] 1993	1994	1995	Average 1993-95
Movies-Series-News:					
	A&E [2]	0.57	0.75	0.69	
	Cartoon	1.00	0.83	0.98	
	CMT	0.40	0.30	0.28	
	CNBC	0.14	0.17	0.21	
	CNN	0.58	0.60	0.93	
	Discovery [2]	0.55	0.55	0.63	
	Family [2]	0.63	0.55	0.59	
	Headline News	0.33	0.30	0.31	
	Lifetime [2]	0.65	0.65	0.84	
	The Nashville Network [2]	0.53	0.50	0.50	
	USA	1.13	1.10	1.10	
	Total	6.51	6.30	7.06	
Sports:					
	ESPN [3]	0.80	0.75	0.98	
	Total 12 Networks	7.31	7.05	8.04	
Percent Movies-Series-News		89%	89%	88%	89%
Percent Sports		11%	11%	12%	11%

[1] Each network rated in its own universe, i.e., among homes able to receive that network.

[2] Less than 24-hour day, e.g. 7am-1am.

[3] Includes ESPN2 in 1995.

Source: Paul Kagan Associates, Inc., *Cable Program Investor*, March 13, 1998, p. 8.

TABLE 3

Ratings of Popular Networks, by Programming Type
1993-1995

Programming Type	Popular Networks	Total-Day Ratings [1] 1993	1994	1995	Average 1993-95
Movies-Series-News:					
	A&E [2]	0.57	0.75	0.69	
	Cartoon	1.00	0.83	0.98	
	CMT	0.40	0.30	0.25	
	CNBC	0.14	0.17	0.21	
	CNN	0.58	0.60	0.93	
	Comedy [2]	0.28	0.25	0.24	
	Discovery [2]	0.55	0.55	0.63	
	Family [2]	0.63	0.55	0.59	
	Headline News	0.33	0.30	0.31	
	Lifetime [2]	0.65	0.65	0.84	
	The Nashville Network [2]	0.53	0.50	0.50	
	USA	1.13	1.10	1.10	
	Total	6.79	6.55	7.27	
Sports:					
	ESPN [3]	0.80	0.75	0.98	
	Total 13 Networks	7.59	7.30	8.25	
Percent Movies-Series-News		89%	90%	88%	89%
Percent Sports		11%	10%	12%	11%

[1] Each network rated in its own universe, i.e., among homes able to receive that network.

[2] Less than 24-hour day, e.g. 7am-1am.

[3] Includes ESPN2 in 1995.

Source: Paul Kagan Associates, Inc., *Cable Program Investor*, March 13, 1998, p. 8.

TABLE 4A

Monthly Prices of Popular Networks, by Programming Type
1993-1995

Programming Type	Popular Networks	Turner Vision Monthly Prices 2/93	1/94	1/95	Average 93-95
Movies-Series-News:					
	A&E	$ 0.89	$ 0.85	$ 0.70	
	Cartoon	0.89 [1]	0.68	0.50	
	CMT	0.89	0.50	0.45	
	CNBC	1.00	0.85	0.79	
	CNN/Headline News [2]	2.25	2.00	1.95	
	Discovery	0.89	0.85	0.65	
	Family	0.89	0.85	0.60	
	Lifetime	0.89	0.85	0.75	
	The Nashville Network	0.89	0.85	0.75	
	USA	0.89	0.85	0.80	
	Total	$ 10.37	$ 9.13	$ 7.94	
Sports:					
	ESPN [3]	$ 2.25	$ 2.15	$ 2.00	
	Total 12 Networks	$ 12.62	$ 11.28	$ 9.94	
Percent Movies-Series-News		82%	81%	80%	81%
Percent Sports		18%	19%	20%	19%

[1] Not offered by TurnerVision. Estimated based on annual rates of other packages and TurnerVision's relative monthly and annual rates.
[2] Includes CNNI in 1995.
[3] Includes ESPN2 in 1994 and 1995.

Source: *Satellite Orbit*, 2/93, 1/94 and 1/95.

Monthly Prices of Popular Networks, by Programming Type
1993-1995

Programming Type	Popular Networks	Turner Vision Monthly Prices 2/93	1/94	1/95	Average 93-95
Movies-Series-News:					
	A&E	$ 0.89	$ 0.85	$ 0.70	
	Cartoon	0.89 [1]	0.68	0.50	
	CMT	0.89	0.50	0.45	
	CNBC	1.00	0.85	0.79	
	CNN/Headline News	2.25	2.00	1.95	
	Comedy	0.89	0.50	0.45	
	Discovery	0.89	0.85	0.65	
	Family	0.89	0.85	0.60	
	Lifetime	0.89	0.85	0.75	
	The Nashville Network	0.89	0.85	0.75	
	USA	0.89	0.85	0.80	
	Total	$ 11.26	$ 9.63	$ 8.39	
Sports:					
	ESPN [2]	$ 2.25	$ 2.15	$ 2.00	
	Total 13 Networks	$ 13.51	$ 11.78	$ 10.39	
Percent Movies-Series-News		83%	82%	81%	82%
Percent Sports		17%	18%	19%	18%

[1] Not offered by TurnerVision. Estimated based on annual rates of other packages and TurnerVision's relative monthly and annual rates.

[2] Includes ESPN2 in 1994 and 1995.

Source: *Satellite Orbit*, 2/93, 1/94 and 1/95.

TABLE 4B

Annual Prices of Popular Networks, by Programming Type
1993-1995

Programming Type	Popular Networks	Turner Vision Annual Prices 2/93	1/94	1/95	Average 93-95
Movies-Series-News:					
	A&E	$ 8.50	$ 8.25	$ 7.95	
	Cartoon	6.00 [1]	5.50	5.50	
	CMT	5.00	5.00	4.95	
	CNBC	10.00	6.00	6.00	
	CNN/Headline News [2]	21.00	20.50	19.95	
	Discovery	8.40	8.25	7.40	
	Family	8.50	8.25	6.70	
	Lifetime	8.40	8.25	8.20	
	The Nashville Network	9.95	9.50	7.95	
	USA	9.95	9.00	9.00	
	Total	$ 95.70	$ 88.50	$ 83.60	
Sports:					
	ESPN [3]	$ 25.00	$ 23.00	$ 22.00	
	Total 12 Networks	$ 120.70	$ 111.50	$ 105.60	
Percent Movies-Series-News		79%	79%	79%	79%
Percent Sports		21%	21%	21%	21%

[1] Not offered by TurnerVision. Estimated based on annual rates of other packagers.
[2] Includes CNNI in 1995.
[3] Includes ESPN2 for 1994 and 1995.

Source: *Satellite Orbit*, 2/93, 1/94 and 1/95.

TABLE 4B

Annual Prices of Popular Networks, by Programming Type
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Programming Type	Popular Networks	Turner Vision Annual Prices 2/93	1/94	1/95	Average 93-95
Movies-Series-News:					
	A&E	$ 8.50	$ 8.25	$ 7.95	
	Cartoon	6.00 [1]	5.50	5.50	
	CMT	5.00	5.00	4.95	
	CNBC	7.00	6.00	6.00	
	CNN/Headline News	21.00	20.50	19.95	
	Comedy	5.00	5.00	5.00	
	Discovery	8.40	8.25	7.40	
	Family	8.50	8.25	6.70	
	Lifetime	8.50	8.25	8.20	
	The Nashville Network	10.00	9.50	7.95	
	USA	10.00	9.00	9.00	
	Total	$ 97.90	$ 93.50	$ 88.60	
Sports:					
	ESPN [2]	$ 25.00	$ 23.00	$ 22.00	
	Total 13 Networks	$ 122.90	$ 116.50	$ 110.60	
Percent Movies-Series-News		80%	80%	80%	80%
Percent Sports		20%	20%	20%	20%

[1] Not offered by TurnerVision. Estimated based on annual rates of other packagers.
[2] Includes ESPN2 for 1994 and 1995.

Source: *Satellite Orbit*, 2/93, 1/94 and 1/95.

ATTACHMENT A

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n/e/r/a
Consulting Economists

ATTACHMENT A

STATEMENT OF QUALIFICATIONS OF LINDA McLAUGHLIN

Linda McLaughlin is an economist and Vice President at National Economic Research Associates, Inc. (NERA), a firm of consulting economists.

She received a Bachelor of Science degree in Mathematics, *cum laude*, from Marquette University in 1968 and a Master's degree in Economics from the University of Pennsylvania in 1970. While studying at the University of Pennsylvania, she completed all Doctoral course requirements and written examinations and was awarded a teaching assistantship for the 1969-1970 academic year.

From 1970 to 1974 she was employed as an Instructor in Economics at Hofstra University where she taught courses in introductory economics, microeconomic theory and the application of mathematics to economics.

Since joining NERA in 1974, she has worked extensively on antitrust and trade regulation matters. She has investigated the dimensions of product and geographic markets, market structure and performance, the impact on competition of various mergers and acquisitions, vertical and horizontal arrangements and other trade practices in a variety of consumer and producer industries.

Ms. McLaughlin has performed a number of economic analyses of electronic and print media. She has analyzed several program and music performance rights markets and various

competition issues affecting broadcast and cable television and radio. In the regulatory area, Ms. McLaughlin has evaluated existing and proposed FCC rules concerning ownership of television stations in adjacent markets, broadcast network financial interest and syndication, and cable rate regulation. She has analyzed the competitive effects of changes in newspaper and magazine distribution and performed newspaper costing studies in connection with allegations of predatory pricing, discriminatory rates and damages. Further, she has investigated questions of advertising competition, media diversity and concentration.

In the area of insurance, she has analyzed proposed changes in the antitrust exemption, the so-called crises in liability and auto insurance, the effect of various regulatory mechanisms and the impact of changes in distribution.

In addition, Ms. McLaughlin has worked extensively in the area of impact and damages in connection with antitrust, contract, false advertising, environmental and other litigation. She has prepared affirmative damage estimates on behalf of both plaintiffs and defendants, as well as analyses of damage studies performed by others. The firms involved in these analyses include manufacturers of photographic supplies, consumer electronic products, fertilizers, paint, windows and pharmaceutical products and distributors of chemicals, steel, cellular phones and emergency lighting equipment.

TESTIMONY, REPORTS AND PUBLICATIONS

Paschall and Intervenors v. The Kansas City Star Co. (W.D. Mo.), an antitrust case.
Deposition testimony, November 1980.

Comet Industries, Inc. v. ESB Inc., et al. (W. D. Mo.), a breach of contract case.
Deposition testimony, September 1981.

Mississippi Chemical Corp. v. Chemical Construction Corp. et al. (S.D. Miss.), a breach of *contract* case.
Deposition testimony, June 1982.

East Coast Chemicals v. Exxon (Sup. Ct. N. J.), a product liability case.
Damages report, June 1983; deposition testimony, June 1983.

Action Publications v. Panax Corp. et al. (W.D. Mich.), an antitrust case.
Deposition testimony, June 1984; trial testimony, December 1984.

Acorn Building Components, Inc. v. Norton Co.; Jeld-Wen, Inc. v. Norton Co.; and Weather Shield Mfg, Inc. v. Norton Co. (E.D. Mich., Southern Div.), product liability cases.
Deposition testimony, October 1985.

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December 1998

TESTIMONY OF PAUL LINDSTROM

I am Paul Lindstrom. I am a vice president with Nielsen Media Research (NMR) an independent publicly held company. I have worked at NMR for 21 years. I am responsible for all national custom research and all custom research for local cable. In my current role I work with clients to determine the best methodologies to answer their research questions. These methods can involve either the analysis of existing databases such as the National People Meter Sample, the NSI Metered Market or NSI Diary Samples, or the development of new databases through proprietary data collections. Through the years I have worked on projects as varied as the pre-launch concept tests for ESPN, The Weather Channel and DIRECTV, the design of Nielsen's Syndicated Pay Cable, VCR Usage, Syndicated Satellite and Home Technology Reports as well as the CommerceNet Study of Internet Usage, Nielsen Media's behavioral segmentation scheme known as the QUADS and of course the MPAA studies for the CRT and CARP over the last 17 years.

When we were initially approached by MPAA to produce an estimate of viewing to individual stations among satellite dish owning homes we evaluated using the National People Meter Sample, the various NSI samples or creating a separate proprietary data. It was our opinion that the best methodology would be an analysis of the existing NSI database.

Nielsen Station Index (NSI) is a division of Nielsen Media Research (NMR). This division has the responsibility for collecting and reporting data on television usage in local television markets (also known as designated market areas, or DMA's). NSI's rating services are considered the "currency" for making determinations about the value of television programming in local markets as well as for syndicated programming on a national level through the NSI Report On Syndicated Programs (ROSP), pay cable programming through the Pay Cable Report and demographic and household audiences for small cable networks through "projection reports." NSI's services are widely subscribed to by stations, agencies, advertisers, networks (both broadcast and cable), multi-system cable operators, individual cable systems, syndicators etc.

NSI utilizes two primary data collection methodologies for measuring television viewing: set diaries and NSI household meters. All television markets (DMAs) in the country are measured using set diaries at least four times per year (February, May, July and November). The NSI sample size for each measurement period is approximately 100,000 households. Set diaries are used to obtain both household and demographic information. (For details on NSI's standard diary methodology see Attachment A).

Household meters are devices which attach to the tuner of each television receiver in the sample household and convey to NSI whether the set is on or not, and if so what channel it is tuned to. Household meters are used to measure viewing in individual homes in the subset of markets that are measured by NSI meters. The metered markets are a subset of all markets in the country. In 1995 approximately 45% of the households in the United

States fell within the boundaries of the metered markets. Diaries are also used in metered markets to measure demographic ratings. Thus household level data is available via the diary from a sample of all households in the country, metered household level data is only available in a portion of the country.

NSI regularly reports the diary information in a series of standard syndicated reports: including the VIP reports for all markets, the ROSP, the Pay Cable Report, and Cable Projection Reports. In addition, NSI clients regularly request special proprietary analyses of the NSI diary and/or metered databases to derive information that is important to the client but which is not available from the standard syndicated reports. Because these "special" studies are based on the same information from which the regular NSI reports are developed, they are considered to have great validity and reliance among broadcasting and cable executives.

NMR has been producing special studies for MPAA, first for distant cable viewing and more recently for satellite carrier viewing, for the last 17 years. MPAA requested NMR to produce a special analysis limited to viewing by satellite dish owning household for each of the years, 1992-95. NMR was able to produce the special studies requested because of the nature of the diary survey. The NSI diary identifies household characteristics such as but not limited to cable status, Age of Head-of-House, Presence Working Women, Presence of Children and Satellite Dish Ownership. We are, therefore, able to cull the satellite dish households from the database and produce viewing data only for those households.

In order to obtain the best measurement of such viewing, NMR decided to use the data on which NSI's local market Viewers in Profile (VIP) reports are based. Because a large number of households are surveyed, NMR felt the resulting data would capture sufficient reporting from the small number of satellite households in the country to provide reliable estimates of their viewing.

A metered measurement is considered to be a more accurate assessment of viewing among all television households. But, the metered measurement does not as reliably report viewing of smaller segments of the viewing public as is possible with the diary measurement. In 1992-95, satellite dish owning households comprised less than 5% of all television households. Consequently, NMR felt that it would be best to base the satellite dish household measurement on the diary database. There simply are not enough satellite households in the Nielsen People Meter Sample to yield a national sample of satellite viewing in the detail necessary for this proceeding. Sometimes our clients suggest that we use a combination of NSI household meters from those markets where available and the NSI diaries for the rest of the country. This would violate basic research principles to mix methodologies and Nielsen regularly recommends that the methodologies be kept separate.

The MPAA supplied NMR with a list of the stations retransmitted by satellite carriers during each year in the 1992-95 period to be used for the study. The studies thus examined the universe of stations offered to satellite dish owning households. The basic

methodology used to produce the special reports each year was consistent except as noted.

The methodology was a process of rummaging through the entire NSI database to find the information pertinent to the MPAA's request. The first step was to limit the analysis to satellite home. As I explained above, the NSI diary asks whether the households owns a satellite dish, thus giving us the means to identify satellite households from among all the households surveyed. Once the satellite households were isolated, we looked only for viewing of television programs in those households.

Each diary household reports what program it was viewing at any time when the television set was on. Nielsen gathered those responses and checked their accuracy in order to compile the database on which we relied. Looking only at the responses from satellite households, NMR produced estimates of how many of them watched programs on the stations that were provided by the MPAA, during each quarter-hour of each day for each measurement.

The studies were based upon February, May, July and November measurement periods in each year except for 1992. By the time the 1992 study was originally ordered, the raw data for February of that year had already been destroyed in accordance with NSI's regular data retention policies. Therefore the 1992 viewing results were based upon only May, July and November information.

Estimates of satellite household viewing on quarter-hour-by-quarter-hour basis without any identification of the program being broadcast were supplied to the MPAA in electronic form for their further analysis.

The chart below shows the range of relative errors for the quarter-hour viewing of a program broadcast by a single station in the special studies depending on the size of the audience and the frequency of the broadcasts. The left-hand column of the chart ("Projection") lists various audience size intervals that reflect the average quarter-hour audiences reported in the special studies. The next three columns represent the number of times that a program might have been broadcast during the measurement periods, starting with a program that was broadcast only on one day during the four measurement periods and moving over to programs that were broadcast every week during every one of the measurement periods. As the chart shows, and as would be expected, the size of the relative error decreases as a program is broadcast more and/or is seen by a larger audience.

INDIVIDUAL DAY INDIVIDUAL QUARTER-HOUR RELATIVE ERRORS

	Relative Error		
Projection	One Day	Four Weeks	Four Weeks/ Four Sweeps
5000	89%	45%	22%
10000	63%	32%	16%
20000	45%	22%	11%
30000	36%	18%	9%
40000	32%	16%	8%
50000	28%	14%	7%

ATTACHMENT A

NSI DIARY SAMPLE SELECTION

NSI Diary Sample Selection

1. **Sample Design**

Samples of television households are used to produce estimates of TV audiences in NSI markets. Sample sizes specified for NSI markets are chosen to reflect the relative importance of the business decisions made with local television audience estimates, and the problems of measuring a particular market or market types. Generally, sample sizes are related to market size with larger samples used in larger markets. Market sample sizes are specified by DMA for markets having a DMA and by SRA or NSI Area for markets without a DMA. (See Section A of Nielsen Station Index Reference Supplement for descriptions of DMA, SRA and NSI Areas.)

For sampling purposes, the counties in each NSI market with a DMA are divided into one or more geographic areas or strata. Usually the Metro counties comprise one stratum, all non-metro counties in the DMA are a second stratum and the NSI Area counties not in the DMA are a third stratum. In special cases the Metro or remainder DMA areas may be divided into two or more strata.

The specified sample for a market is allocated to the sampling strata comprising the market. The sample allocation procedure varies by market type and survey period with different procedures used for DMA and non-DMA markets. When all DMAs are measured, i.e., the November, February, May and July survey periods, the specified sample size for a market is allocated to the sampling strata within the DMA. For survey periods when only a limited number of markets are measured, i.e., October, January and March, sample is also allocated to the stratum comprised of NSI area counties not in the DMA.

The specified sample for a market will be allocated to the sampling stratum level in proportion to the number of television households.

For October, January, and March, sample for counties in the NSI Area but outside the DMA will be determined using optimum allocation. Optimum allocation is based on the weighted standard deviation of viewing within the NSI Area. Sample for those counties within the DMA will be allocated the sampling stratum level in proportion to the number of television households.

In some markets, the sample allocated to the Remainder DMA sampling stratum is increased in order to meet minimum strata sample size requirements. Reductions may be made to the sample allocated to the Metro sampling stratum.

During the October, January and March survey periods, sample is also allocated to the sampling stratum consisting of non-DMA counties. The determination and allocation of sample is done as follows:

NSI Diary Sample Selection (Cont'd)

Sample Design (Cont'd)

1. The proportion of the NSI Area sample allocated to the DMA and non-DMA is determined using the optimum allocation procedure, e.g., 85% of the NSI Area sample is allocated to the DMA and 15% to the non-DMA stratum.
2. The NSI Area sample size is determined using the specified DMA sample size and the proportion of the total NSI sample allocated to the DMA, e.g., if the specified DMA sample size is 500 and the DMA proportion is 85%, the total NSI area sample is 500/85 = 588.
3. The non-DMA stratum sample size is determined by subtraction e.g. 588-500 = 88.

For markets without a DMA but with an SRA or Metro area, a sample size is specified for the SRA or Metro area. Such areas consist of one or more counties assigned to a DMA sampling stratum. If the SRA or Metro area expected in-tab sample is less than the specified sample, then the stratum is divided into two strata, with specified sample used for the SRA or Metro stratum.

To illustrate:

Sampling Stratum Counties	Estimated TV Households	Share of Sample	Expected In-tab	
			Example A	Example B
A	95,360	49.2%	246	148
B	72,470	37.4	187	112
C	16,660	8.6	43	26
D	9,350	4.8	24	14
Stratum Total	193,860	100.0%	500	300

If county A is an SRA with a specified sample size of 200 and the DMA sample allocated to the stratum is 500 (Example A), then the SRA expected in-tab sample is 246 and is greater than the specified SRA sample (500 x 49.2% = 246)

If the DMA stratum sample size were 300 instead of 500 (Example B), then the SRA expected in-tab sample is less than the specified sample size (300 x 49.2% = 148) and the original stratum is divided into two strata consisting of the SRA (county A) and the remaining counties (B, C and D) with a sample of 200 specified for county A.

A similar procedure is used for non-DMA markets without an SRA or Metro area. Each county is part of a DMA market sampling stratum. For such stratum,

NSI Diary Sample Selection (Cont'd)

estimates are made of the expected in-tab sample for each county. If the sum of the expected in-tab samples for non DMA market counties exceeds the specified non-DMA market sample, then the stratum sample size is used. If the sum of the expected in-tab sample is less than the specified sample size, then the DMA stratum is divided with additional samples specified for the non-DMA market counties in order to achieve the specified sample size.

A sample frame is a list, file, or some other way of identifying the sampling the units that have a chance of being selected in the sample. It provides a means for selecting the sample units. The frame used in all NSI markets is a file of telephone numbers including both listed and unlisted household. This file, known as a total telephone frame (TTF), is maintained by Nielsen Media Research and updated three times each year. Households without telephone are excluded from the frame and have no chance to be selected for the sample. Households with more than one telephone number have a greater change of selection than households with one telephone number.

Acxiom Corporation, Conway, Arkansas, compiles computer files of telephone households from a number of sources including telephone directories and public record information.

Three times per year, ACXIOM provides Nielsen Media Research with counts of listings by telephone exchange and zip code. For exchanges with listings in more than one county, counts of listings are provided for each county.

A computer file of all exchanges operating in the U.S. is obtained from Bell Communications Research (BCR) three times per year. The exchanges in the Acxiom file are compared to the exchanges in the BCR file. Those found in the Acxiom file but not in the BCR file are considered either errors or not longer in service and are not included in the frame. Exchanges in both the Acxiom and BCR files are included in the frame and assigned to the county containing the largest number of listings for the exchange. For each exchange in the frame, blocks of 100 consecutive telephone numbers are formed and identified by the first two digits of the telephone number suffix, e.g., 202-55-12NN (area code-exchange-block). It is assumed that none or a very small percent of the numbers in blocks without listings in Acxiom's file are household numbers and all such blocks are deleted from the frame. Any household numbers in such blocks have no chance to be selected for NSI samples.

Exchanges that are only in the BCR file are considered to be either non-residential (business government, etc.) or so new that no residential households are assigned to them and are therefore not included in the frame.

The frame consists of Primary Sampling Units (PSUs) of blocks of 100 numbers with one or more listings for exchanges in both the Acxiom and BCR files.

Each block (PSU) is assigned to a sampling strata based on the county assigned tot he exchange. The blocks are stratified geographically within strata to provide a proportionate distribution of telephone numbers within the sampling strata.

The selection of samples for each market is done in two phases:

Sample Selection

1. The selection of a large first phase sample to be used to identify listed and unlisted telephone
2. The selection of samples of telephone numbers from the first phase sample to be used as the final sample for obtaining viewing information.

First Phase Sample

An initial sample size is determined for each sampling stratum by dividing the specified in-tab sample size by an estimated achievement rate for each stratum. The estimated achievement rates used are based on experience from prior year measurements reflecting both listed and unlisted sample return rates. The in-tab sample size is doubled to obtain a first phase sample size for each stratum. This increase is made to: 1) provide for possible changes in the specified DMA sample size, 2) allow for more return rate data in developing final achievement rates, and 3) provide for a more accurate estimate of the proportion of listed and unlisted samples.

To Illustrate:

DMA Sampling Stratum	Measurement Specified In-tab	Estimated Achievement Rate	Initial Sample Size	First Phase Sample
Metro	450	35	1,286	2,572
Non-Metro	250	30	667	1,334

If for a measurement the Metro stratum specified in-tab for a DMA is 450 and the estimated achievement rate is .35, then the initial sample size is 1,286(450/35 = 1.286). The first phase sample size is twice as large, 2,572(1,286 x 2 = 2,572).

For the non-Metro stratum, the initial sample size is 667, i.e., (200/30 = 667) and the first phase sample is 1,334 (667 x 2 = 1,334).

A sampling interval is determined by dividing the number of PSUs in the strata by the first phase sample size. A random number between 1 and the sampling interval is used to select the first PSU and the remaining PSUs are selected systematically. For each selected PSU, the telephone number is completed by appending a two digit random number. Because all PSUs are of equal size, each telephone number has an equal chance of selection.

C. NSI Diary Sample Selection (Cont'd)

For example:

Assume a sampling stratum contains 8,000 PSUs (hundred number blocks) and the first phase sample is 2000. The sampling interval is 4 = 8,000/2,000, i.e. one of every four PSUs will be selected. If the starting random number is 3, then PSUs 3.7, 11.15, etc., would be selected. For each selected PSU, a two-digit random number is appended to the PSU to complete the sample telephone number. If PSU 404-652-37 is selected and the two-digit random number is 64, then telephone number 404-652-3765 is included in the sample.

The first phase sample of telephone numbers for all sampling strata are sent to Acxiom and matched to Acxiom's file approximately 70 million listings. and names and addresses are provided for the sample telephone numbers in Acxiom's file. This matching process results in two files: telephone numbers that match (listed households) and telephone numbers that do not match. The unmatched numbers include unlisted households. Acxiom then matches the unlisted telephone numbers against a file of business telephone listings. The file, which contains approximately 10.0 million listings and is updated semi-annually, is obtained from Dun & Bradstreet Information Services, Parsippany, NJ. Those telephone numbers that match the business file are flagged. The listed and unlisted telephone numbers including names and addresses for listed numbers are returned to Nielsen Media Research in their original selection sequence.

First phase samples are selected three times per year with the first sample used to select final samples for the October and November measurement periods, the second sample used to select final samples for January, February and March and the third sample used to select final samples for May and July. All numbers selected for a first-phase sample are used for only one final sample.

Selection of Final NSI Samples

The matched and unmatched first phase sample files are sequenced within sampling strata with the listed numbers preceding the unlisted numbers. Separation by listed and unlisted status results in a proportionate selection of listed and unlisted telephone numbers for the final sample.

For each sampling strata, a gross sample size of telephone numbers needed to yield the specified in-tab sample size of household is estimated. The gross sample size estimate, similar to the initial sample size, is determined by dividing the specified in-tab by an estimated achievement rate for each stratum. The estimated achievement for rates used for the final NSI samples are similar to those used for the initial sample except they (1) include return rates from more recent NSI measurements, and (2) are based on the proportion of listed and unlisted samples selected from the first phase sample.

For example, if the Metro stratum specified in-tab is 450 (see example on previous page) and the new estimated achievement rate is .37, then the final NSI sample size is 1,216 (450/.37) = 1,216).

The final NSI sample is systematically selected from the first phase sample by determining a sample interval (first phase sample size divided by the final gross sample size) and using a random start. The selection procedure also assigns the sample telephone numbers to weeks.

Before the final NSI sample is selected, a computer edit is run. This edit eliminates all unlisted telephone numbers from 100 blocks containing only one Acxiom listing plus all unlisted numbers that matched Acxiom's business file in addition, in all non-metered markets all unlisted telephone numbers from 100 number blocks containing two to nine Acxiom listings are eliminated. For the October, January and March surveys, unlisted telephone numbers in blocks containing 2-9 Acxiom listings are not eliminated from those counties belonging to the NSI Area of a metered market.

The development of the TTF, the selection and matching of the first phase sample are also done as described in sections C.2 and C.3 above using Acxiom data. The first phase sample, however, is matched to a file of telephone households maintained by the Acxiom Corporation, Conway, Arkansas. (Acxiom's file of approximately 118,000.000 telephone households is compiled from a number of sources including telephone directories and public record information. In addition to telephone numbers, listings in the Acxiom file contain either addresses or names and addresses and are updated monthly.) The matching process results in two files: telephone numbers that match (address is available) and telephone numbers that do not match. Axciom also passes the unmatched telephone numbers against a file of business telephone listings. The file, which contains approximately 15 million listings and is updated quarterly, is compiled from four sources: American Business Inc., DataBase America, TW and The Lead Sheet. Those telephone numbers that match the business file are flagged. The matched and unmatched telephone numbers that match the business addresses for listed and addresses for some unlisted numbers, are returned to Nielsen in their original selection sequence.

Effective with the January 1997 measurement, Axciom data is used exclusively for the first phase and final sample selections as described in sections C.2 and C.3. of NSI Reference Supplement.

Telephone Sample Recruitment

Telephone calls are made to all sample telephone numbers in the areas surveyed for each measurement interval. Prior to the telephone call a postcard is mailed to households whose numbers are listed in the telephone directory. The purpose of the telephone call is to enlist the cooperation of the household for the survey, verify names and addresses among listed number households, and obtain names and addresses from unlisted number households. During the telephone call respondents are asked the number of TV sets in the household, whether any sets are connected to a cable television service and the name of the cable service. Respondents are also asked the race of the household in 74 DMAs that have a black

household universe estimate of at least 10% of the television household universe estimate. Also respondents are asked what language other than English is used most often in the households in 30 DMAs where at least 10% of television households are estimated to be Hispanic. Interviews are administered in the Spanish language as required.

Business or other non-households, persons living in group quarters and temporary or seasonal homes which may be identified as a result of the telephone recruitment call, or by notations in returned diaries, are removed from the sample. Thus, for all practical purposes, the measurement sample is restricted to primary households. Military base homes having telephones are included in the sample.

Households volunteering information during the telephone recruitment call that a household member is employed in the media industry are removed from the sample and are not mailed. Also, diaries for any household answering yes to a diary question regarding TV station, TV network, cable TV network, or cable TV system employment are also removed from the sample.

In a small number of markets, the same sampling procedures are used to select a buffer sample of telephone numbers. This buffer sample is used to increase the amount of Black, Hispanic, or Age-of-Head <35 households included in the final NSI sample. The size of the buffer is based on the estimated number of additional Black. Hispanic, or AOH <35 households needed to achieve the universe penetration for the given market and is calculated using historic results. The entire buffer sample is called using identical procedures and only those households identified as Black. Hispanic, or AOH <35 are mailed a diary. All Non-Black, Non-Hispanic, and AOH $\geq$ 35 households from the buffer are excluded from the final sample.

NSI Diary Mailing

A diary for up to five television sets in operating condition is mailed to households that agree to cooperate in the survey. A monetary incentive is included is included with the diary. The incentive for the top 100 ranked DMA's differs from the incentive used for DMA's ranked 100+. In certain markets, differential incentives are utilized. Nielsen Media Research has the right to use differential incentives without identifying specific markets. For listed telephone households and unlisted telephone households with matched addresses, diaries are also mailed to refusal households, and to households not answering fifteen telephone call spread over at least two days at different times of the day and evening. Effective with the March 1997 measurement period, ten calling attempts were made to all households. Previously, listed telephone numbers received five calling attempts and unlisted telephone numbers received ten calling attempts. Effective with the October 1997 measurement period, fifteen calling attempts were made in an effort to reach all households during diary recruitment.

Sample households reporting during the telephone recruitment call that they will be away or will not have an operable television set during the survey week are sent diaries in the event conditions change.

NSI Diary Mailing (Cont'd)

Increased monetary incentives and diary week telephone calls are used among households determined to be Black or Hispanic in the diary recruitment call. Bilingual English/Spanish language diaries, explanatory letters, and brochures are sent to Hispanic households based on responses from the telephone recruitment call. Final classification of Black and Hispanic households is based on responses to the questions in the diary. If the questions in the diary are not answered, final classification is based on the responses from the telephone recruitment call.

The purpose of these special procedures among Black and Hispanic households is to increase diary returns to approximate levels of other sample households in the same area. A reminder is sent to each household asking them to begin diary entries on Thursday. In households with one or more sets connected to a cable television service carrying 120 or fewer channels, the reminder is in the form of a letter. A list or all channels carried by the cable television service is included with the letter to assist households in diary entry of channels tuned. All other households are sent a letter to assist households in diary entry of channels tuned. All other households are sent a post card. At the end of the diary week a post card is sent to all homes to remind them to return the diary. In addition, effective with the May 1992 measurement, all Spanish households and listed Non-Ethnic household will receive a telephone call during the diary-keeping week to encourage them to return their diary. All Black households and unlisted Non-Ethnic households will receive two telephone calls during the diary-keeping week: a start-of-week; a start-of-week call reminds the respondent to began diary-keeping and an end-of-week call reminds them to return the diary.

Effective with the November 1996 measurement, mailed diaries will request respondents to enter household tuning and persons viewing information for all 24 hours of the day. Each day of the survey week will start at 5:00AM and conclude at 4:59AM. Prior to the November 1996 measurement, tuning and viewing information was only requested from 6:00AM to 2:00AM, although respondents were asked to provide information for 2:00AM to 6:00AM on separate lines at the bottom of the diary page.

NSI Diary Sample Processing

1. Diary Edit Procedures

Diaries are used to collect both tuning and viewing information in diary–only markets, and viewing information in metered markets. The diary provides simple basic instructions which aid the diary-keeper in entering station or channel name, channel number, and program(s) viewed for 5 minutes or more within a quarter-hour. Instructions are also given for entering information on which household member(s) and/or visitors are viewing. The diary-keeper is instructed to enter viewing by household members and/or visitors, along with information on age, gender and hours worked per week for each household member. A column is also provided for the diary-keeper to indicate if the TV set was on but no one was watching or listening.

Diaries which are returned to Nielsen Media Research are carefully examined and edited following established procedures. Initially, an attempt is made to identify and credit viewing based on agreement between the channel number and station or channel name (call letters) as entered by the diary-keeper. If there is no agreement, the entered program name is referenced to determine if a match exists with either channel number or station or channel name (call letters). If there is a match, appropriate credit is given. Generally, markets are edited using Nielsen Media Research's Computer-Assisted Diary Checking system. The editor enters the diary information into a computer which maintains various reference material used in making editing decisions. This reference information is automatically made available to the editor when conflicts occur between the entered channel number and station or channel name, or when the entry is incomplete. The completed edit information is then transmitted to the mainframe for further processing.

In addition to soliciting information regarding changes in non-duplication protection and cable carriage Nielsen Media Research also solicits information regarding changes in programming carried on Translators and Satellite stations. Generally, Nielsen Media Research will use that information in the editing of household diaries in the appropriate market.

It is the obligation of each station to inform Nielsen Media Research of any changes affecting that station, including, but not limited to, programming carried on translators and satellite stations. In addition to any such information, Nielsen Media Research may, in the course of editing household diaries, determine that there may be changes to information currently on file, in which case Nielsen Media Research will make every reasonable attempt to verify the accuracy of that information with the appropriate station(s) and to use that information in the editing of household diaries in the appropriate market.

NSI Diary Sample Processing

2. **Diary Edit Procedures**

Nielsen Media Research does not guarantee the accuracy of the information used to edit household diaries and reserves the right to edit those diaries based on this best judgment of the available information. Regardless of the accuracy of the information used in editing household diaries, Nielsen Media Research is under no obligation to re-edit diaries or to re-issue data which may have been processed prior to the amended information being known to Nielsen Media Research. In the event that such information provided Nielsen Media Research may prove to be inaccurate or inadequate, so that in Nielsen Media Research's judgment re-processing and/or re-issuing printing and distribution costs incurred by Nielsen Media Research. Any re-processing and/or re-issuing of the data will be scheduled as determined by Nielsen Media Research. In any event, Nielsen Media Research is under no obligation to re-issue data older than two measurement periods.

2. Diary Response Rates

Table 3 of each VIP provides an estimate of initially Designated Households (Estimated TV Households) and a count of In-tab Households for various geographic areas. Initially designated households are an estimate of the number of television households in the initial sample of telephone numbers selected for a given geographic area. Not all telephone numbers are television households; some are businesses, non-TV households or not in service.

The response rate for a geographic area is the ratio of in-tab households to the estimated initially designated households. For example, if for a DMA there were 550 in-tab households and 1000 initially designated households in the initial sample, the response rate would be 550/1000 or 55%.

Samples of telephone numbers are initially selected and sent to Acxiom to identify numbers contained in their computer file of names, addresses and telephone numbers compiled from telephone directories. All numbers in Axciom file are designated as "listed numbers." Some of the numbers designated as listed are no longer households at the time of the survey, since some households move between the time the directory is compiled and the survey. Number for such household may be disconnected. In addition, many of the unlisted numbers are not households. The number of initially designated households is estimated separately for listed and unlisted numbers.

Effective with the November 1996 measurement, the first phase sample of telephone numbers are sent to Acxiom to identify numbers contained in their file of names, addresses and telephone numbers compiled from telephone directories and public record information. Numbers in the Acxiom file are listed and unlisted telephone numbers.

The following counts of sample telephone numbers are compiled from the results of the diary placement call and diary mailings.

1. Listed Numbers

    A. Initial sample of listed numbers
    B. Households contacted on the diary placement call and identified as having one or more TV sets.
    C. Households contacted on the diary placement call and identified as not having a TV set.
    D. Households contacted on the diary placement call that refuse to provide information about TV sets.
    E. Numbers not contacted on the diary placement call after five attempts less those for which diaries are returned as undeliverable by the post office. (All listed numbers not contacted are mailed diaries, since names and addresses are available for such numbers).
    F. Numbers not contacted on the diary placement call for which diaries are returned as undeliverable by the post office.

G. Numbers that are disconnected, not in service, businesses or other non-households, or households with persons employed in the television broadcasting industry.

2. Unlisted Numbers

A. Initial sample of unlisted numbers.
B. Households contacted on the diary placement call and identified as having one or more TV sets.
C. Households contacted on the diary placement call and identified as not having a TV set.
D. Households contacted on the diary placement call that refuse to provide information about TV sets.
E. Numbers not contaced on the diary placement call after 10 attempts. Based on studies, it is estimated that one-fourth of the numbers not answering after 10 attempts are households. Effective with the use of Acxiom data, it is estimated that 38% of the numbers not answering after 10 attempts are households. The proportion of non-contacted numbers that are households may vary from area to area.
F. N/A
G. Numbers that are disconnected, not in service, business or other non-households, or households with persons employed in the television broadcasting industry.

Using the above counts, estimates of initially designated households are made as follows:

Listed Numbers

1. Estimated non-TV households among households refusing to provide TV set information:

$$H = C/(B+C) \times D$$

2. Estimated non-TV households among listed numbers of not contacted and for which diaries were not returned as undeliverable:

$$I = C/(B+C) \times E$$

3. Initially Designated Households = A-C-H-I-F-G

Unlisted Numbers

1. Estimated non-TV households among households refusing to provide TV set information:

$$H = C/(B+C) \times D$$

2. Estimated non-TV households among non-contacted numbers:

$$I = C/(B+C) \times (1/4\ E)$$

Effective with the use of Acxiom data:

$$I = C/(B+C) \times (.16E)$$

3. Initially Designated Households = A-C-H-I-(3//4 E)-G

   Effective with the use of Axciom data:

   Initially Designated Households = A-C-H-I-(.62E)-G

The estimated initially designated households for the entire sample is the sum of the estimated initially designated households among the listed and unlisted numbers.

Illustration		**Listed** Numbers	**Unlisted** Numbers
A.	Initial Sample	1731	3197
B.	Known TV Households	1123	1102
C.	Known Non-TV Households	39	74
D.	Households; Unknown TV Status	143	134
E.	Non-contact, Less Undeliverable	96	N.A.
	Non-contact	N.A.	227
F.	Non-contact, undeliverable	12	N.A.
G.	Non-households	318	N.A.

H. Estimated Non-TV Households Among Households Refusing TV Status

Listed	Unlisted
$\frac{39}{1123 + 39} \times (143) = 4.80$	$\frac{74}{1102 + 74} \times (134) = 8.43$

I. Estimated non-TV Households Among Non-contacted Household

Initially Designated Households

Listed Numbers = $1731 - 9 - 4.80 - 3.22 - 12\text{-}318 = 1354$ (rounded)

Unlisted Numbers = $3197 - 4 - 8.43 - 5.4\ (.62)(227) - 1660 = 1308$ (rounded)

Total = $1354 + 1308 = 2662$

Audience estimates reported in the VIP are based on a sample of TV households and persons in TV households. Weights are applied to the sample households and persons to:

- Adjust for different sampling rates used among the sampling strata within a DMA.

- Attempt to compensate for households in the universe that are not included in the sampling frame.
- Attempts to compensate for differences in response rates among various types of households.

Computation of Household Weights

Weighting is a procedure used to adjust the in-tab sample data so that the weighted sample is in balance with the universe for various household characteristics (controls). An initial household weight is computed by week for each projection area which may be an individual county, a split county or a combination of counties. Combinations of counties are made by grouping the relatively small counties with other counties to form projection areas of sufficient size for individual week weighting. These are made within the same sampling stratum. The initial weight is equal to the ratio of the projection area TV household Universe Estimate to the projection area in-tab sample size. Once the initial weights are determined. The weights are adjusted using an iterative procedure so that the weighted sample balances with the Universe for various controls.

a. Controls

The controls consist of household and geographic categories. Except for geography, controls are used at the DMA level or at the Metro and remainder DMA levels. The number and type of controls vary by market and are determined by expected in-tab DMA sample sizes and the relative importance of some controls such as Black, Hispanic, and Cable. Geographic controls are applied separately by week.

(1) Household Characteristics (DMA or Metro/remainder DMA level)
Race: Black, Not Black (Selected DMAs)
Cable: Yes, No (all DMAs between 10% and 90% cable penetration)
Hispanic: Yes, No (selected DMAs)
Presence of Non-Adults: Any under 18, None (all DMAs)

(2) Geography (by week)
Projection Areas (individual counties or county groups)

b. Adjustment Procedure

The weighting adjustment procedure is an iterative process by which each household is assigned a weight such that the sum of the weights agree within 1% of the control Universe Estimate. In each iteration, the sample is adjusted for the household controls and then the geographic controls.

The weighting adjustment is a ratio estimate:

$$R = \frac{N}{W}$$

where:

N = control Universe Estimate

W = sum of the weights for households included in the control category

The weighting adjustment ration is applied to the weight for each household included in the control category. For example, if the adjustment ration for cable is 1.03, then the weight for each household with cable is multiplied by 1.03 to achieve a new weight.

An iteration will consist of sequentially adjusting for each control once. The household weights are then summed for each control and compared to the control Universe Estimate.

The process stops when the sum of the household weights for each control is within 1% of the control Universe Estimate or when the maximum number of iterations are completed.

The final household weights are then compared to the initial household weights.

In rare cases when the final weight is more than four (4) times the initial weight, the final weight is set back to four (4) times the initial weight. Similarly, when the final weight is less than one-fourth (1/4) of the initial weight, the final weight is set to on-fourth (1/4) of the initial weight.

c. Demographic (Persons) Weights

For each person, their weight is calculated as the household weight multiplied by the appropriate Demographic Adjustment Factor (DAF). DAF's are computed for the DMA or Metro/Remainder DMA by week for each of the following mutually exclusive age/sex categories:

Children	Males	Females
2-5	12-17	12-17
6-11	16-24	18-24
	25-34	25-34
	35-49	35-49
	50-54	50-54
	55-64	55-64
	65+	65+
		Working

Note: For an age/sex category that is a subset of one of the above, DAF from the larger age/sex category is used.

DAFs are computed as the ratio of the mutually exclusive age/sex category. Universe Estimate to the sum of the household weights for persons in the mutually exclusive age/sex category. Using a demographic Adjustment Factor in conjunction with the house hold weight to derive a person weight insures that the sum of the person weights across any demographic category will equal the demographic Universe Estimate.

Diary Ratings Computations

a. Household Ratings

Audience estimates are computed separately for each quarter-hour. Reported audience estimates are averages of appropriate quarter-hours, days and weeks.

Household ratings are computed by summing the household weights of tuning households in the DMA (Metro) and dividing by the DMA (Metro) TV Household Universe Estimates.

Household station totals are obtained by summing the household weights of all tuning households both within and outside the market's NSI Area.

b. Demographic (Persons) Ratings

Persons ratings are computed by summing the persons weights of viewing persons in the DMA (Metro) and dividing by the DMA (metro) persons Universe Estimate.

Persons station totals are obtained by summing the persons weights of all viewing persons both within and outside the market's NSI Area.

Report level demographic data will only be produced on the following building blocks or any combination thereof.

Children	Males	Females
2-5	12-17	12-17
6-11	18-20	18-20
	21-24	21-24
	25-34	25-34
	35-49	35-49
	50-54	50-54
	55-64	55-64
	65+	65+
		Working

c. Rounding

Household and Persons audience estimated in the VIP are reported as average quarter-hour DMA ratings, station totals, shares and daypart cumulative audiences for

various combinations of quarter-hours, days and weeks. To facilitate the computation of reported audience estimates, projected audiences are computed to units by quarter-hour for each county measured. Separate persons projected audiences are computed for the mutually exclusive age/sex categories listed previously.

All computations are done using audience estimates carried to units with rounding performed as the last stop of the computation procedure. For this reason, reported audience projections may differ from the sum or average of the reported component parts. For example, the rounded reported projection for 18-49 plus 50+ may not equal the reported projection for 18+. Although rounding at the last step may result in occasional minor differences, it yields more precise estimates that rounding prior to summing the component parts or using a procedure that eliminates the minor differences.

c. Rounding (Cont'd)

TABLE 1

Illustration of Rounding for Station Totals

I. Unrounded Station Totals for Mutually Exclusive Age/Sex Categories:

Male + Female		Females		Males	
2-5	2,257	12-17	3.276	12-17	3.936
6-11	3,596	18-20	1,642	18-20	2,163
		21-24	854	21-24	2,323
		25-34	6,914	25-34	7.756
		35-49	11,623	35-49	9,866
		50-54	4,761	50-54	3,660
		55-64	6,751	55-64	4,866
		65+	2,368	65+	808

II. Reported Station Totals

		Rounded	
Persons	Unrounded	000	00
2+	79,420	79	794
18+	66,355	66	664
12-24	14,194	14	142
Women			
18+	34,913	35	349
18-34	9,410	9	94
18-49	21,033	21	210
25-49	18,537	19	185
25-54	23,298	23	233
25-64	30,049	30	300
50+	13,880	14	139

Men			
18+	31,442	35	314
18-34	12,242	12	122
18-49	22,108	22	221
25-49	17,622	18	176
25-54	21,282	21	213
25-64	26,148	26	261

		Rounded	
Females	Unrounded	000	00
12-24	5,772	6	58

Teens	Unrounded	Rounded	
12-17	7,212	7	72
Girls	3,276	3	33

TABLE 1
Illustration of Rounding for Station Totals

II. Reported Station Totals (Cont'd)

Children	Unrounded	Rounded	
2-11	5,853	6	59
6-11	3,596	4	36

e. Accuracy

With respect to the accuracy of the demographic and audience composition information, the user is reminded that demographic information acquired from households is subject to response errors of a different type than those relating to the recording of viewing information. Such errors may be traced to the respondent's lack of knowledge or willingness to reply. The relatively high: i.e., often equal to or greater than the reported audience level. Differences and relationships between such data should not be interpreted as being meaningful. These data may be used in composite with audience estimates for other time periods and/or other markets, so that the composite error is correspondingly reduced.

It is also recommended that the interest of a user seeking precise audience estimates for time periods or audience segments with relatively low audience levels would best be served through special studies using specially structured samples disproportionately allocated to measure the segment of interest.

Cable Television Diary Editing

a. General

Households are classified as cable if any TV set in the household is equipped to receive service from a cable system. Some multi-cable households may not have all TV sets so equipped. Households which pay a fee to receive programs by means other than cable, e.g. MMDS, Satellite Master Antenna Services, Satellite Dish, etc., are classified as non-cable households.

Nielsen Media Research endeavors to contact all cable systems to obtain cable system data including carriage, cable channel positions communities and ZIP code areas served, protection afforded (both network and syndicated), former names of systems, etc. This information is used to assist in the diary editing process.

Generally, Nielsen Media Research's goal is to credit viewing to the source of the programming. If carriage of a station by a cable system(s) totally and simultaneously duplicates the signal telecast by that station, including all program, non-program and commercial content, viewing to that duplicate signal as carried by the cable systems(s) will generally be credited to the station, regardless of the manner in which the cable system obtains that signal. Where carriage by a cable system(s) is of more than one station during a broadcast day, viewing will generally be credited to the appropriate source station. As with non-cable diaries, call letter and channel number agreement are the primary identifiers; program names are used to ensure proper credit where necessary. In the case of a diary mention of viewing over a system not previously identified as operating locally, reasonable efforts are made to contact the system and collect system information prior to processing the diary.

b. Non-Duplication Protection Policy for the Purpose of Editing Cable Household Diaries

In certain situations a cable system(s) may be asked to provide network and/or syndicated program protection. Generally, protection will be deemed provided where the signal of the station carrying the programming against which protection is being provided either is "blacked out" or is replaced by other programming (which other programming may, but need not, be the protected programming). However, in the case of protection with respect to network programs broadcast simultaneously by multiple stations protection generally will be provided where, at a minimum commercials, station identifications, and all other "non-program" content of the signal of the station carrying the programming against which the protection is being provided are replaced with those of the station broadcasting the protected programming. Nielsen Media Research will not provide protection for "non-simultaneous" broadcast of programs in the editing of cable diaries.

Generally, Nielsen Media research will attempt to edit cable household diaries consistent with the simultaneous protection information provided by the cable system(s) (refer to the below description of "Procedures for Resolution of Disputes" for exceptions). The following describes Nielsen Media Research's procedures for obtaining non-duplication protection information in order to facilitate the cable household diary editing process.

1. Nielsen Media Research will notify each broadcast station of any change in its protection status, as provided to Nielsen Media Research by the appropriate cable systems(s), whenever such change(s) occurs.

2. Nielsen Media Research will notify each broadcast station, prior to each all-market measurement period, of the complete non-duplication protection that Nielsen Media Research has on file for that station and requesting from the station specific information concerning any changes in that non-duplication protection status. This notification will include dates by which Nielsen Media Research must receive any additional or amended information in order for that information to be confirmed in a timely manner for subsequent use in the editing of cable household diaries. It is the responsibility of each broadcast station to notify Nielsen Media Research of any discrepancy and/or provide amended information to Nielsen Media Research by the stated deadline(s).

3. Protection will be deemed as provided for programs broadcast simultaneously from more than one source, e.g., a network, where, at minimum, commercials, station identifications, and all other non-program content of the station being protected against are replaced with insertions from the station being protected.

4. In all other cases protection will be considered to be provided when the programming being protected against either is "blacked out" or replaced by other programming.

5. Generally, cable household diaries are edited consistent with the protection information provided by the appropriate cable systems(s).

6. Nielsen Media Research does not guarantee the accuracy of the information received and in any event reserves the right to resolve conflicts based on its judgment of the available information.

c. Non-Duplication Protection Policy – Procedures for Resolution of Disputes.

1. If Nielsen Media Research received in writing a request for information concerning specific protection being given in the market and information disputing the accuracy of such protection, including cable system name, head end location or community served, call-letters of station for which protection is being disputed, and call-letters of distant station being protect against, at lease 24 hours before the start of a measurement week. Nielsen Media

Research will advise the station whose protection information is being questioned of any such disputed information, including the identification of the disputing party.

2. Nielsen Media Research will attempt to contact the identified cable system(s) in order to reconfirm protection status. Reconfirmation of protection must be received in writing from the cable system(s) for protection to be applied in the editing process.
3. Nielsen Media Research will advise both the subject station and the disputing party of the system(s) response, if any.
4. In order for protection to be applied, Nielsen Media Research must receive, in writing, reconfirmation of protection status within two business days of its request to the cable systems(s). Nielsen Media Research will advise both the subject station and the disputing party of the system(s)'s responses(s).

Nielsen Media Research does not guarantee the accuracy of the information received and in any event, even in the case of disputes, reserves the right to edit diaries based on its best judgment-of available information. Regardless of the resolution of such dispute, Nielsen Media Research is under no obligation to re-edit diaries or to re-issue data which may have been processed prior to that resolution.

d. Determination of Cable Carriage Information for the Purpose of Editing Cable Household Diaries

Generally, Nielsen Media Research will attempt to edit cable household diaries consistent with the cable carriage information as provided by a cable system(s). The following describes Nielsen Media Research's procedures for obtaining cable carriage information in order to facilitate the cable household diary editing process:

1. Nielsen Media Research endeavors to contact cable systems periodically in order to determine cable carriage information. If received in a timely manner, as determined by Nielsen Media Research, that information will be used in the editing of cable household diaries.
2. Nielsen Media Research also solicits changes in cable carriage information periodically from broadcast stations. If Nielsen Media Research is notified by a broadcast station(s) of a change in cable carriage information that information will be verified with the appropriate cable system(s). Generally, if that information is confirmed by that cable systems(s). Nielsen Media Research will subsequently use that information in the editing of cable household diaries. Nielsen Media Research will inform the notifying station as to the confirmation status of the provided cable carriage information.
3. In addition to any information obtained from a cable system(s) or broadcast station(s), Nielsen Media Research may, in the course of editing cable household diaries, determine that certain changes in cable carriage may have occurred on a specific cable system(s), in which case Nielsen Media Research will make every reasonable attempt to verify the cable carriage information with the appropriate cable system(s)

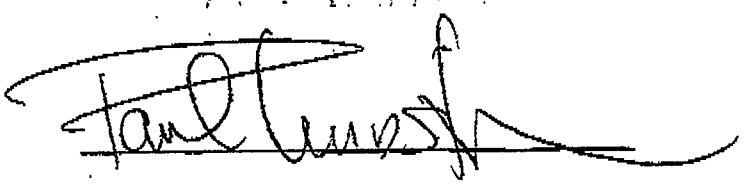
or use information supplied by the diary keeper(s) in the editing of cable household diaries.

4. Nielsen Media Research does not guarantee the accuracy of any cable carriage information received from any cable system(s) and in any event, even in the case of disputes regarding carriage of a station(s), Nielsen Media Research reserves the right to edit cable household diaries based on its best judgment of available information.
5. Regardless of the accuracy of any cable carriage information used by Nielsen Media Research in the editing of cable household diaries. Nielsen Media Research is under no obligation to re-edit diaries or to re-issue data which may have been processed prior to amended information being known to Nielsen Media Research and in any event, Nielsen Media Research is under no obligation to re-issue data older than one year.

6. Multi-Set Usage

In sample households reporting more than one TV set, the simultaneous use of more than one TV set does not increase the HUT, the household is counted only once. In compiling station audiences, duplicate viewing entries to the same station are also counted only once; viewing entries for different stations, however, are counted for each station. As a result, the sum of the reported station ratings may equal or exceed the HUT, even where there are unreportable stations contributing audiences to the HUT. Thus, to the extent that multi-set households use their sets simultaneously and tuned to different stations, they tend to raise the ratings and shares of reportable stations in relation to HUT. Audience to stations not meeting the minimum reporting standards should not be sought by subtracting from HUT figures the sums of ratings shown for other stations.

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge. Executed on January 8, 1999.



Testimony of Dr. James Von Schilling

I am Dr. James Von Schilling, and I work as a Professor of English at Northampton Community College in Bethlehem, PA. I serve on the Board of Governors for the American Culture Association and as their area chair for Journalism and Media. I've presented papers on various aspects of the media, especially television, at numerous conferences, and I maintain a website on the Internet for television, called "The Television Archives." I believe I can help shed some light on the role of TV programs in our culture, beginning with my own background in this area.

I am a native of New Jersey, born in late 1948, just a few months after my parents bought their first television set. They missed watching **Ed Sullivan** on the Sunday night I was born, but they rarely missed it afterwards--and neither did I. I grew up immersed in the popular culture of my times, a devoted fan of Superman comics, John Wayne movies, rock-'n'-roll music, New York sports teams, and a large assortment of TV programs. My favorite shows progressed from **Roy Rogers** and **Howdy Doody** as a child, through **Zorro** and **The Mickey Mouse Club,** followed by dozens of Westerns and family sit-coms, **The Twilight Zone**, and **Perry Mason** in junior high, and onto **The Man from U.N.C.L.E., The Defenders**, and **Hullabaloo** in high school.

I received a B.A. in English from Princeton University in 1970 and an M.A. in Education from New York University in 1972. I spent the next five years teaching English in Hackensack Middle School and High School, where I acquired an interest in teaching and writing about popular culture and the media. My interest in these subjects was partly a response to my own background, having been such a fan of TV shows, popular music, comic books, and sports and entertainment stars of the 1950s and 60s.

I also recognized the importance of popular culture and the media in the lives of my students. I suspected that the products of our culture--including TV shows, movies, and popular

music--were a reflection of our society and possibly an influence on all of us. Growing up in the 1970s, these young Americans had their own favorites on TV and in music and movies. They watched **Happy Days** and **Welcome Back, Kotter**, for example, while I was now watching **The Mary Tyler Moore Show**, **Columbo**, and **Saturday Night Live**. But we all seemed to watch **All in the Family, The Waltons, M*A*S*H** and a few more popular shows of the era.

I began to view American popular culture as an untapped goldmine for educators. Not only were the performers and products of show business almost guaranteed to spark an interest among my students (and myself as well), they also had highly teachable content, relevant to the world around us. There were values, lessons, artistry and social history in TV shows, movies, and music. As a progressive-minded teacher, I wanted to include them in the curriculum, and I often tried.

One of these attempts changed my life and career. In the mid-1970s, while working on the middle-school level, I created and taught a course on popular music; it fueled my desire to teach popular culture and the media, but to older students and adults. That desire led me to return to graduate school--specifically, to Ohio's Bowling Green University, home of the Center for the Study of Popular Culture and a graduate program in Popular Culture.

I spent most of the late 1970s and early 80s at Bowling Green, earning a doctorate in American Culture Studies and teaching a variety of college courses about popular culture and the media. I also studied and taught in the Popular Culture graduate program--an unusual community within academia in which TV shows, movies, popular music, comic books, etc., are appreciated and taken seriously. Not only did we watch many of the popular shows of the time period--**M*A*S*H**, **Dallas**, **Soap**, and **Hill Street Blues**, for example--we studied and discussed them in detail. They became topics for our papers and subjects for the classes we taught. We appreciated the artistry we saw in these shows, critiqued the industry behind them, and always considered the important role they played in our culture.

During my third year at Bowling Green, I arrived at a topic for my doctoral studies in American Culture: I would propose a theory for studying the media that accounted for the personal involvement in popular culture I saw in myself and nearly everywhere I looked. I wanted to understand why Americans had made popular culture and the media such a basic part of their daily lives and what the implications of that involvement were.

In studying mass media theory in graduate school, I felt that the framework already in place in this discipline was too behavioristic for popular culture studies, which is considered a humanities. Mass media theory in the United States is a social science, using a "stimulus-response" framework to understand the behavior of the public. Many researchers in this field conduct clinical studies and tabulate their results in statistics, graphs, and tables. They often view the public as a mass organism, reacting almost soullessly to the "stimuli" of TV programs, advertising, etc. I believe instead that reality is more complex--that the American public is really a vast assortment of individuals, responding in a variety of ways to performers and products throughout our diverse culture.

The branch of media theory closest to this approach is called "uses and gratifications," and it was developed in the United States and Britain in the 1970s. This theory proposes that the public has a variety of needs which are satisfied by the media, including the need for entertainment and for "surveillance" (being informed about the outside world). These media theorists, too, are social scientists and conduct their research in ways that did not suit my humanities background. But in their writings I did find a link in the notion that Americans have basic needs to be entertained and informed, and that our media and popular culture help "gratify" these needs.

My doctoral studies resulted in a dissertation entitled "The Application of Humanistic Principles to the Study of American Mass Media." In it, I adopted the beliefs of humanistic psychology as an alternate framework for understanding the relationship between people and the

media in our society. Humanistic psychology, as practiced by Abraham Maslow, Carl Rogers, and other renowned psychologists, suggests that human beings are on a lifelong journey of personal growth. People have the freedom to choose throughout their daily lives, according to humanistic psychology, and the choices that healthy people make every day are likely to be positive choices for them and fulfill some of their basic human needs.

Applying the ideas of humanistic psychology to media theory, I saw that much of the involvement of healthy Americans in the media is the result of free and conscious choice and is potentially a positive force in their lives. Watching our favorite TV shows and performers enriches our lives, for example, as we smile, laugh, cry, cheer, and learn with characters who we grow to know in time. The legions of devoted followers of a TV series are thus a positive aspect of society; among them are many people who are fulfilling basic needs with their regular viewing of the program.

I found evidence for this positive viewpoint of the media in firsthand accounts of TV viewers of the late 1970s and early 80s, such as the fans of **Star Trek**, **M*A*S*H**, and other popular shows. And I noted that fans of TV shows could be found among all social classes, occupations, and education levels. (This point was reinforced years later when I attended a conference of humanities professors taking place on the day that the last episode of **Dallas** was being televised. Just a casual remark from me about the show brought out all the "closet" **Dallas** fans among these academics and elitists, and we shamelessly gathered around a hotel TV set that night to watch the final fate of J.R., Sue Ellen, Bobby, et al.).

I completed my doctoral work in 1982 and have taught on the college level ever since, first at Rider College in New Jersey and for the past 15 years at Northampton Community College. I'm an English professor, but I've never lost my inclination to study, write, and teach about popular culture and the media. It remains an educational goldmine that I incorporate into my writing classes and the courses I've taught over the years in humanities and journalism. And

I've fulfilled my desire to teach these subjects to older students--not just my regular students, who are often in their 30s and 40s, but to senior citizens who are *from* the 30s and 40s and who attend special talks and short courses I've given over the years.

As a professor, I've seen time and time again the same reaction when topics dealing with popular culture, especially TV, arise in the classroom. People are interested, involved, knowledgeable, and eager to have that important aspect of their daily lives emerge in public. Of particular value to me are the popular TV programs from the 1960s, 70s, and 80s. I teach students who grew up in these decades, and the shows and performers they watched are now a cultural resource in the classroom. Just this past semester, for example, I used a videotape of the **Cheers** pilot episode from 1982 and an essay that analyzed it as the basis for a unit in writing. My youngest students, born in 1980, and my oldest students, born in the 1950s, were all familiar with the series and able to write about it.

I've also continued to be interested in media theory. The field has changed somewhat since the early 1980s, having been influenced by deconstructionism and other new movements in the humanities and cultural studies. Now, more studies are focusing on the public as active audience members, who exhibit behavior that's more complicated than previously recognized. But the field remains in general a social science, still practicing a clinical approach to understanding people and their culture.

Over the past few decades, a number of media researchers have published their findings on how and why people watch television. Some articles have focused on the use of TV by people who are in unhealthy emotional states, such as stress and depression. Researchers have found, for example, that men under stress tend to watch more TV than usual, although the same is not true for women (Anderson et al, 1996). An article on one study concludes that air traffic controllers who watch TV after work have fewer marital problems (Repetti, 1989). As for depressed people, published research has shown that they may use TV as a coping device,

although "heavy viewing" of TV in itself seems unrelated to depression (Potts and Sanchez, 1994). Research in these areas, related to the field of "mood management theory," suggests that TV viewing "may be a relatively harmless, if temporary, way to reduce stressful feelings and conflict" (Anderson et al, 1996).

The articles I've read on these studies are interesting to me, but not always insightful. The research is designed to measure small aspects of a specific group of people and can only hint at possible connections to the rest of us. If among the millions of Americans watching a TV show is a small percentage of men who've turned on their sets as a way of coping with stress, then what can we conclude about that audience in general? Probably nothing.

Other researchers in this field are studying the loyalty of TV viewers to specific channels and particular types of programs, or genres, such as "action shows." The findings I've read are inconclusive, but suggest that people are much more loyal to specific programs than they are to channels and program types (Becker and Schoenbach, 1989). One study, for example, focused on the high percentage of viewers who changed channels as soon as they discovered that the regularly scheduled program--a crime series--had been replaced by a news program (Wober, 1988). Obviously, it was not the channel itself that had attracted these viewers.

This research on viewer loyalty seems to validate, as one of the reports explains, "the lay person's view...that people simply pursue the programs they want to see" (Wober, 1988) In fact, the same studies on loyalty do suggest that a majority of people who watch a TV series one week are likely to have watched the same series the previous week (Brosius, Wober, and Weimann, 1992). This finding may seem fairly obvious. We expect that many people who enjoy watching a TV show become fans of that show and will watch it when they can; our commonsense notion is here supported by the published research.

As to how TV shows attract viewers in the first place, other researchers have focused on the level of "appreciation" among viewers of specific shows. Again, the obvious is proven: TV

programs that have high levels of appreciation among their viewers also tend to have bigger audiences (Wober, 1988). In other words, the more viewers a show has, the greater the odds that it's liked by its viewers--the "liking" leads to more viewing.

These studies of viewer loyalty and appreciation seem to be reaching conclusions that are already clear to the TV industry itself. In fact, the business world may have a better understanding of the relationship between viewers and programs than academia has. Companies that specialize in ratings and media-buying can pinpoint which type of Americans are most likely to be viewing what program at any one particular time. As noted in a review of a media essay collection, "The media's competitive success depends on whether they meet an existing need....This scenario is mother's milk to people in marketing or economics, but to many communication researchers it is less familiar (though becoming more so in today's environment)" (Barwise, 1990).

The TV industry has always tried to televise programs that will be liked enough to attract big audiences on a regular basis; this is a guiding principle to the three networks that dominated the industry during much of its history. Their success at attracting viewers--especially loyal ones--is basic to our studies in media and popular culture. After all, if the networks hadn't been able to attract big, loyal audiences to their top TV shows over the past fifty years, would we be studying viewers and programming?

The TV industry itself has changed, however, since the early 1980s. The growth of cable and satellite broadcasting and in VCR sales and rentals has added many choices to what's available on the home screen. The desire of individual Americans to watch a specific program is now complicated by all the other shows that can be switched to, often with just a "click" of the remote.

Some media researchers have responded to changes in the industry by studying how Americans behave in this new multi-channel environment. They've found, as one reviewer

describes, that "men and children are more frequent scanners, flippers, and zappers, while women tend to consult viewing guides and are more habitual in their daily and weekly viewing" (Sherman, 1990). Other researchers have found that, regardless of the number of channels available, most people will limit their regular viewing to seven channels or less (Becker and Schoenbach, 1989).

Do Americans with cable watch more TV than those without? Research I've read suggests that they do, and that the percentage of time cable-viewers spend watching the three major networks has decreased (Becker and Schoenbach, 1989). That doesn't mean, however, that people with cable are watching new types of TV programs: one published study claims that "the categories of programming offered by cable are not radically different from those provided by the broadcast channels....In many cases, cable has offered more of the same" (Becker and Schoenbach, 1989). Thus, viewers with cable are watching the same types of TV programs that viewers without cable are likely to watch.

Media researchers are now using terms such as "viewer's choice repertoires" and "program ecology" to describe the more complex behavior they see among America's TV audience in the 1990s. And, clearly, the changes in our media and culture since the early 1980s have affected the viewing experiences of many Americans by offering us more choices. On the other hand, millions of Americans still watch TV programming every day. And the number of Americans from all walks of life having the same viewing experience can still be enormous; 40 million sets were tuned to the last episode of **Cheers**, for example, when it aired in May 1993.

In the 1990s, Americans still demonstrate their involvement with TV viewing during other moments of their daily lives. They share their viewing experiences at work, at school, or among friends and families, often discussing their favorite TV shows and performers. We describe this as "water cooler" talk and recognize it as a basic part of our cultural interchange. At times, a specific TV show may become a "hot topic," drawing quiet fans of the show into the

social conversation and causing others to watch the show themselves. The public's viewing of a specific TV show in the 1990s occasionally becomes national news in itself. The telecast of the last episode of **Seinfeld** in May 1998, for example, became one of the top news stories of the year. (I was even contacted myself by several reporters to explain the "significance" of the telecast and the vast audience watching it.)

Americans also display their viewing of TV shows in more material ways, such as in the products they buy related to the show. One need only glance at the shelves in the media section of bookstores today, for example, to find tangible evidence that TV shows still develop followings of fans and other viewers. There are scores of books on TV programs, including such current favorite series as **Friends** and **The X-Files**, along with those now in syndication, such as **I Love Lucy, The Honeymooners**, **Star Trek**,and **The Brady Bunch**. Americans also buy magazines with articles on their favorite programs, as well as "souvenir" shirts, caps, posters and coffee mugs to show they are fans.

Recently, a new avenue opened for TV viewers to display their involvement: the Internet. A quick search on Yahoo provides a list of over 7000 TV programs with websites--many of them with just one website, but others with over a hundred each. These websites are for programs that date back to the 1950s and include most of the popular shows of the 1960s, 70s and 80s. On them, fans of the shows post lists of characters, episode guides, photos, news and commentaries, and even scripts written by viewers.

These websites could be considered a cyberspace version of traditional TV fan clubs and the club newletters that are mailed to members. Similarly, the many "news groups" on the Internet that are devoted to TV shows and performers are a cyberspace version of fan conventions, such as the regular gatherings of "Trekkies." Here, fans and other viewers of specific programs have a means of posting letters and notes for other people to read and answer.

Several years ago, I became a regular reader--and sometimes contributor--of a news group for **Northern Exposure**. The experience supported my belief that being a fan of a TV show can be a positive and fulfilling force in a person's life. The news-group members found in each other common interests, values, and emotions. We shared knowledge and experiences, pondered the themes and mysteries of the show, and in general encouraged our own creativity and participation. Not all TV news groups are as successful, but they do show the extent and personal way that many people remain involved with their favorite TV shows.

I too have a website that focuses on TV. "The Television Archives" is my attempt to put the history of early TV programming (prior to the mid-1950s) on the Internet, in an organized and readable form. The short pieces I post on the Internet each month are based on my own research into TV history and the thousand-plus sources I've gathered over the years. This project began for me ten years ago, as a series of papers for the American Culture Association. And I expect it to last another five years, as I upload more information, photos, links, and hopefully video selections.

In a way, this project represents my going full circle and returning to the culture into which I was born, when TV first became popular. My arriving back where I came from, however, is a result of my experiences over the last twenty years in American culture and media studies. I'm still studying the relationship between Americans and their popular culture, and my research into the early years of TV viewing has helped me reach some general conclusions.

With Americans and television, my belief is that TV has succeeded and prospered not only because of economics, but because of human nature as well. Simply put, the TV industry has served enough of the needs of Americans over the past five decades to make television a basic and popular part of our daily lives and national culture.

It has been said that just the act of watching the TV screen itself may fulfill the need of Americans to relax during leisure time, when one program might satisfy us as much as any other.

In fact, when TV was first sold to the public in 1939 and 1940, many Americans were fascinated with viewing the images and eager to watch anything on the screen, which then included amateur performers, slide shows, and test patterns.

However, it wasn't until TV viewers were attracted to specific shows and performers nearly a decade later that television became a popular medium. The first large group of viewers attracted to a TV program were the East Coast children (now in their mid to late fifties) who became fans of Howdy Doody in early 1948. They were soon followed by their parents and other adults in the East and Midwest (now in their sixties and older) who were attracted by Milton Berle and his **Texaco Star Theatre** in late 1948 and early 1949.

Americans first realized that television was a widely popular medium in May 1949, when Milton Berle appeared the same week on the covers of both **Time** and **Newsweek**. The press reported that the size of the audience watching **Texaco Star Theatre** was affecting daily life in our society, with decreases in movie attendance, restaurant business--even water usage--during each Tuesday night telecast. And in 1949 and 1950 came another case of a TV program affecting daily life, when telecasts of "Hopalong Cassidy" Western movies led to a wave of purchases of toy cowboy gear and other products with Hopalong's name and picture.

The most important product Americans were buying, however, because of Hopalong Cassidy, Milton Berle, and Howdy Doody was television itself. Millions of Americans bought their first TV sets to watch these and other popular shows and performers. With TV, they could fulfill their need for entertainment, humor, information, drama, and relaxation, and they could participate in a new and popular part of their culture.

Of course, attracting millions of viewers was exactly what the TV industry wanted to do in the 1950s. The major networks were focused on televising programs that would attract enough viewers to satisfy national sponsors. They adapted successful shows from radio and used other formats from Hollywood, theater, and clubs. America's TV screens now had some of the

most popular performers in show business, along with others being seen by big audiences for the first time. In particular, Americans were attracted to Lucille Ball and Desi Arnaz as soon as their show, **I Love Lucy**, began airing in late 1951.

The networks were now televising from coast to coast, and the first national shared TV experience came in the midst of **I Love Lucy**'s second season. On the night of January 19, 1953, over 40 million Americans watched the "Lucy Goes to the Hospital" episode and shared in the humor, warmth, and excitement of the birth of Little Ricky. Afterwards, a million Americans sent letters, telegrams, baby clothes, blankets, and other gifts to Lucille Ball, who had given birth to a real baby boy on the same day.

Within a month, CBS and sponsor Philip Morris signed Ball and Arnaz for three years at $8 million. This was TV's first long-term, high-salaried contract, and the strongest sign yet that the TV industry realized its programs and performers were the key attraction to viewers. Although it's been over forty years since "Lucy Goes to the Hospital," the pattern set back then remains a basic feature of the TV industry. Programs and performers that can attract big numbers of viewers are courted, developed, and rewarded. They anchor the nightly primetime schedules of the major TV networks, and they attract loyal viewers regularly.

In the meantime, other aspects of the TV industry have changed. The Du Mont network disappeared, and ABC replaced it and was followed by PBS and Fox. The rating fortunes of the three major networks shifted, and the popularity of some program genres, such as Westerns and variety shows, soared and dropped, and were quickly replaced by other genres. The TV screen at home blossomed into color and grew both larger and smaller. TV sets moved out of our living rooms into all areas of our homes, and they became connected to new devices: cables, VCRs, satellite dishes, and video-game systems.

Throughout these changes in the business and technology of TV, Americans continued to enrich their lives by becoming loyal viewers of their favorite shows, finding the experience to be

relaxing, emotional, funny, informative, romantic, or any combination of these and other qualities. They continued to share their experiences with fellow TV viewers at home or in social interchanges, from "water cooler" talk to today's Internet postings, that are part of our daily cultural lives.

Americans grew up watching TV in the 1950s, 60s, 70s, 80s, and/or 90s, and most of the population continues to watch. We may not have liked or even viewed the same programs as our neighbors and colleagues, or our parents, grandparents, and children. But virtually all of us have shared the general experience of being fans of specific TV shows and performers during the decades we watched.

We've remained fans of TV shows that have changed characters and performers, and switched nights or networks, although sometimes we chose to move on to other new favorites. Similarly, we often followed our favorite TV performers when they became new characters on different programs, even in different genres (e.g. all the comic actors who became detectives).

And when our favorite programs are syndicated, we often watch them again, or catch an episode or series that we missed during its earlier run. In the 1990s, cable channels and independent stations televise reruns of **Home Improvement**, **Seinfeld**, **The Simpsons,** and other popular shows of the 1990s. The licensing fees for these programs range above a million dollars per episode, based on their ability to attract loyal fans and other viewers.

These channels and stations also televise many of the TV shows that first aired during our youth and young-adult years. So familiar are we with these shows that the first names of characters have become a cultural shorthand for us: Fonzie, Hawkeye, Rhoda, Maude, J.R., Gomer, Hoss, Opie, Archie and Edith, Ralph and Alice, and Fred and Ethel. These names and many more resonate with images in our culture, and their programs still attract us.

This past New Year's Day, for example, the highest-rated TV program in the New York market was a **Honeymooners** episode from 1955-56 airing in a "marathon" on independent

station WPIX. Given all the televised bowl games and other viewing options in New York on January 1, 1999, why did so many people choose to watch a forty-year old show that they may well have seen before--and more than once? I can easily suggest a number of reasons: familiarity, loyalty, real affection, the need to relax, to laugh, and to enjoy talented performers, the mixing of TV-viewing generations in our homes on holidays, and the stimulating of memories.

But people watched **The Honeymooners**, too, because WPIX believed the program still fulfilled a need that had kept it popular for so many years and could still attract many viewers. In a nutshell, that's how I see the relationship between Americans and television today, in the early 1990s, and for the past fifty years. Americans are encouraged by the industry to watch TV often and are enabled by the technology to choose what they view. Given these opportunities, they choose to view regularly the TV programs and performers they like and that help them fulfill their needs. It seems to be a solid relationship, both economically and culturally, and I anticipate it continuing into the next decade.

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I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge.

Executed on January 7, 1999.

James A. Von Schilling

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge.

Executed on January 7, 1999.

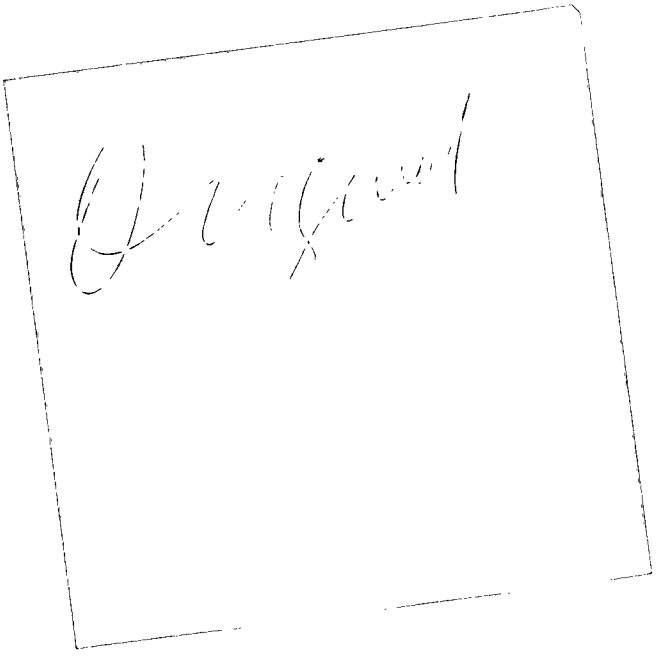
James A. VonSchilling

TESTIMONY OF ALAN WURTZEL

I am Alan Wurtzel, Senior Vice President, Media Development, Brand Management and Research for ABC Inc, My responsibilities include oversight for all ABC Division Research activities including the ABC Television Network. I joined ABC in 1978 as Manager, Social and Developmental Research. In 1981 I was appointed Vice President, Broadcast Standards & Practices where I was responsible for the review and approval of all commercial and program content for the ABC Television Network. In 1987 I was appointed Senior Vice President, Marketing and Research Services where I was responsible for the operation of the Research Department and had a great deal of daily interaction with the various Entertainment Divisions which programmed the Television Network. In 1992 I was appointed Senior Vice President, News Magazine and Long Form Programming for ABC News where I was responsible for all primetime news programming and for the development of new programming for the News Division. In 1998 I was promoted to my current position at the Corporation.

Throughout my 20-year career at ABC I have been directly involved in virtually all aspects of broadcast network television programming. I am extremely familiar with the process by which networks review, acquire rights to and schedule programming; with the involvement of network sales and affiliate relations departments in program selection and scheduling; with the process and function of network television research; and the programming offered now and for the past decade by the major broadcast networks and cable networks. I also have knowledge of the nature of the broadcast operations and programming activities of network affiliated stations and cable networks across the country.

ATTACHED NOTES



INTRODUCTION

The following ABC/CBS/NBC network-affiliated stations were retransmitted by satellite carriers during the period 1992-1995:

KCNC, 4, Denver	KMGH, 7, Denver
KNBC, 4, Los Angeles	KOMO, 4, Seattle
KPIX, 5, San Francisco	KTVT, 11, Fort Worth
KTVU, 2, San Francisco	KUSA, 9, Denver
WABC, 7, New York	WBZ, 4, Boston
WFLD, 32, Chicago	WHDH, 7, Boston
WNBC, 4, New York	WPLG, 10, Miami
WRAL, 5, Raleigh	WUSA, 9, Washington
WXIA, 11, Atlanta	

The television programming offered by the Networks[1] to the public is the best quality and most attractive programming that can be found on television. Further, the variety of news, entertainment and sports programming broadcast each day by the Networks is unmatched by any other program service. This programming has great value to the public and to satellite carriers. The combined Network/affiliate program service – including high-quality national fare and syndicated programs – is unique in the video program market.

The Networks distribute their programming by broadcast through television stations around the country. Each Network has affiliation arrangements with over 200 such stations whereby they agree to broadcast the Network's programs in exchange for

[1] For purposes of this testimony, "Networks" refers to the ABC, CBS and NBC Television Networks.

compensation. The compensation takes two forms: the Networks pay cash to most affiliated stations, and the stations are allowed to sell some commercial time placed in the Network's programs.

The Networks' affiliated stations combine the Network programs with local programming produced by the station — primarily local news with coverage of local weather, business, political and community affairs — and syndicated programming. The affiliate stations add value to the Networks' program offering not only by adding local programs tailored to their individual markets, but by adding local promotion of Network and local programming and by undertaking involvement in local civic affairs. The Network/affiliate arrangement combines the efficiencies of national production, distribution and sales at the Network level with significant local control over the ultimate program service offered to the public. The public enjoys the benefits of a national and local service tailored to meet the needs of the community.

VALUE OF NETWORK PROGRAMS TO THE VIEWER

The Networks offer to the television audience an amalgam of news, sports and original entertainment programming of distinctively high value and popularity. There can be no dispute about the appeal of Network programming to the public. Network programming continues, as it always has, to generate the highest ratings on any given day notwithstanding the increased competition the Networks face.

I have seen the value viewers place on network programming in the research I have reviewed over the past 20 years. From this experience, I have gained an understanding of how people watch television in today's highly competitive environment. Viewers tend to turn first to the "major networks" as they assess their viewing options. They also seem to use the

major networks as "anchors" to help them navigate through the multiplicity of available program channels.

There are many reasons why network television is so popular and is considered to be of such value to the consumer. The primary reason is that in a world of increasingly proliferating channels which are finely-targeted in terms of content and audience focus, the three major networks remain the only true ***broad***casters which offer a wide variety of programming encompassing a broadest gamut of program genres and content and across the entire day from early morning to late night. And because of this diverse programming, viewers are able to satisfy their enormous appetites for entertainment and for information about what is happening in the world.[2]

Each Network news organization has always defined the character of the entire network and is fiercely independent, dedicated to its role in the life of our nation, uncompromising, competitive and proud. During 1992 – 1995, each Network news organization supplied by far the largest amount of programming for the Network. In 1995 CBS broadcast almost 1,100 hours of news, ABC over 1,600 hours of news and NBC over 1,500 hours. These broadcasts included extensive coverage of the Oklahoma City Federal Building bombing, the assassination of Israeli Prime Minister Yitzhak Rabin, the O.J. Simpson trial, the budget welfare battles in Congress and the civil war in the Balkans. In 1992, the Networks provided extensive coverage of the Presidential campaign and election including coverage of the presidential and vice-presidential debates and of congressional races around the nation. Each day the Network news organizations create and offer for broadcast a plethora of regularly scheduled news and public affairs, and when events

[2] America's Watching: Public Attitudes Toward Television, Roper Starch Worldwide, 1995. Research conducted during the 1992-95 period relevant to this proceeding disclosed that three-quarters of viewers who make a special effort to watch specific television programs say that most of them are on the Networks. America's Watching, Public Attitudes Toward Television, The Roper Organization, 1993.

dictate, unscheduled coverage of fast-breaking stories. They produce and broadcast daily, morning, evening and late-night newscasts including CBS THIS MORNING, THE TODAY SHOW, GOOD MORNING AMERICA, NIGHTLINE, and UP TO THE MINUTE. Evening newscasts are anchored by such experienced and well-known journalists as Dan Rather, Peter Jennings and Tom Brokaw.

The Network news organizations also offer weekly public affairs programs such as FACE THE NATION, THIS WEEK WITH DAVID BRINKLEY, CBS SUNDAY MORNING and MEET THE PRESS which discuss and analyze the news of the week. Critically-acclaimed and award-winning weekly news magazines such as 60 MINUTES, DATELINE, PRIMETIME LIVE, 48 HOURS and 20/20 are consistently some of the most-watched television programs.[3] These public affairs programs can be seen nowhere else other than on ABC, CBS and NBC. Indeed, one of the driving forces behind the enactment of Section 119 was to provide universal access to Network news programs, as Congressman Tauzin stated during its consideration:

> "Because many of those dishes are located in rural areas where access to broadcast signals is limited, this legislation will make available for the first time, a luxury most of us take for granted – Network news."[4]

Network news, however, is only one type of popular programming the Networks offer. The American public also watches television to be entertained, and the Networks present the best and most exciting

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[3] For example, for the 1995 television season, those programs achieved the following household ratings: 20/20, 13.6; PRIMETIME LIVE, 12.3; 60 MINUTES, 14.2; DATELINE, 10.8; 48 HOURS, 7.8. NTI 9/18/95 – 5/22/96 (regular programs only).

[4] H.R. Rep. No. 887(II) 100th Cong. 2d Sess. 44, reprinted in 1988 U.S. Code Cong. And Admin.. News.5638.5658.

entertainment programming available anywhere. During any given week, a Network television viewer has access to an almost unlimited choice of entertainment programming meeting the tastes and desires of the most heterogeneous society in the world. The Networks each day offer something for everyone.

Weekly comedies such as SEINFELD, THE NANNY, HOME IMPROVEMENT, ROSEANNE, GRACE UNDER FIRE, CAROLINE IN THE CITY, COSBY, FRIENDS and MURPHY BROWN amuse us and make us laugh. Daily daytime dramas including THE YOUNG AND THE RESTLESS, GUIDING LIGHT, ALL MY CHILDREN, GENERAL HOSPITAL and DAYS OF OUR LIVES offer many an image of a whirlwind fantasy world. Weekly night-time dramas including ER, CHICAGO HOPE and NYPD BLUE challenge and provoke us. Informative and educational programming like BEAKMAN'S WORLD, CBS STORYBREAK, FLASH FORWARD and SCHOOLHOUSE ROCK cater to a very special and important audience, our children. Family-oriented series such as TOUCHED BY AN ANGEL, PROMISED LAND, EARLY EDITION, DR. QUINN MEDICINE WOMAN, FAMILY MATTERS and SECOND NOAH create a viewing experience all can enjoy together. Finally, late night programming such as THE LATE SHOW WITH DAVID LETTERMAN, SATURDAY NIGHT LIVE and THE TONIGHT SHOW WITH JAY LENO entertain and amuse us at the end of a long day.

The variety of programming almost seems endless with additional Network presentations of blockbuster motion pictures, exciting game shows, cartoons, lavish mini-series, glamorous specials and original dramas based on fact. Many of such Network telecasts are truly national events, allowing households across the country to share a common experience.

In addition to news and entertainment product, the Networks broadcast a complete lineup of sports programs. The daytime, weekend and Monday night Network schedules abound with thrilling athletic competition including a full assortment of college and professional sports such as football, baseball, basketball, as well as auto racing, tennis and golf. The networks provide front-row seats to major sports championships that are furnished nowhere on television other than on the Networks and FOX: THE WORLD SERIES, THE SUPERBOWL, THE NCAA BASKETBALL TOURNAMENT, and, of course, THE OLYMPICS. The overwhelming popularity of these events with television viewers is clearly reflected in the ratings. Because of the demand for all network programs, satellite carriers have made it a point to carry, and indeed have increased the carriage of, network signals for their subscribers.

The Networks consistently provide diverse and original programming designed to appeal to a broad general audience. A significant amount of Network programming is "first-run". The Networks inform, educate, and entertain in a manner that cannot be equaled by any other type of programming service. The viewer's preference for Network programming is visibly and repeatedly demonstrated in the weekly ratings. Because Network programming is so valuable to the viewers, such programming has great value to the satellite carriers.

THE PROGRAM DEVELOPMENT PROCESS

The process by which the Network program schedules are created is long and expensive. Network broadcasters commence the program selection process by first examining their existing programming needs to determine which current programs should be discarded and how much and what kind of replacement programming must be selected. This is largely based on the ratings. The series development process commences about 14 months prior to

the start of the broadcast season in which the new series is to be launched. The selection process is extensive, sophisticated and requires input from and decisions by many people. Each Network, for example, may receive 2,000 program submissions and series concepts in July of the year preceding the broadcast year for which they are designed. Series development executives consult with writers and producers in a collaborative effort to reduce the 2,000 submissions down to about 100 scripts and 30 produced pilots.

About 50 people at each Network then spend about a week reviewing extensive research as well as screening a reduced short list of programs to further refine a list of programs for selection. Finally, top-level executives review the finalists and choose which programs will ultimately be broadcast.

A proper selection of programs creates an identity, style and look for a Network. This "branding," as it is called, helps viewers develop expectations and make assumptions as to the kind and quality of programming they can expect from a particular Network. According to the New York Times, the Networks, along with FOX and newcomers UPN and WB, spent $400 million to $500 million in 1996 as each tried to create distinctive audiences.[5] NBC -- "Must-See TV" – revolves its programming around urban and "singles-friendly" programs such as SEINFELD, FRIENDS and ER. ABC focuses its marketing efforts on a broad audience, particularly viewers 18 to 49 years of age. CBS -- "Welcome Home" – targets its traditional core audience of older viewers with established television stars including Bill Cosby, Rhea Pearlman, Don Johnson and Ted Danson. Branding helps viewers more readily make a connection between a collection of programs and the Network that delivers them.

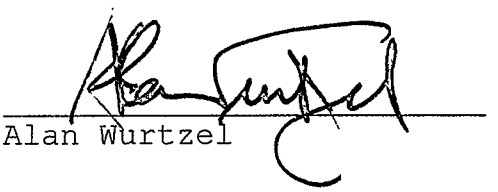
[5] New York Times. September 20, 1996, page D1.

The local affiliated stations expend substantial efforts in broadcasting syndicated programming that attracts viewers. A station's general manager, program manager, sales management, news director and operational and technical staff may all be involved in the selection of syndicated programming. Station personnel also meet with program producers and syndicators and attend the annual NATPE and other conventions where programming is available to be licensed. Stations analyze viewing data – their own or that provided by syndicators – in deciding what programs to air. The also consider their own broadcasting and marketing objectives in this process.

CONCLUSION

In conclusion, the programming produced or acquired by the Networks and distributed primarily through each Network's nationwide system of affiliates is the highest quality and most popular television programming available to the American public. Satellite carriers and subscribers recognize the value inherent in these programs which make them among the most popular in satellite households.

I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct to the best of my knowledge. Executed on 1/7/99.



Alan Wurtzel

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Alan Wurtzel

CERTIFICATE OF SERVICE

I, Gregory O. Olaniran, certify that I have, this 8th day of January, 1999, served five (5) copies of the foregoing Program Suppliers' Direct Testimony and Exhibits by hand to:

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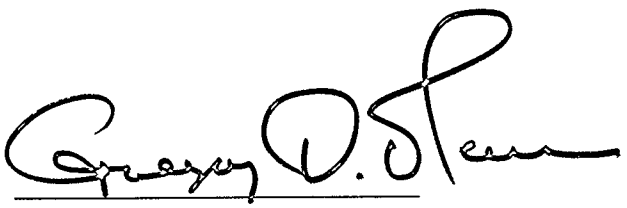
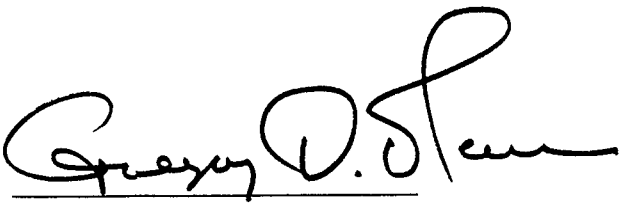


Gregory O. Olaniran

CERTIFICATE OF SERVICE

I, Gregory O. Olaniran, certify that I have, this 8th day of January, 1999, served five (5) copies of the foregoing Program Suppliers' Direct Testimony and Exhibits by hand to:

Robert Alan Garrett
Kathleen A. Behan
Gary R. Greenstein
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202



Gregory O. Olaniran

MORRISON & HECKER L.L.P.
ATTORNEYS AT LAW

1150 18th Street N.W., Suite 800
Washington, D.C. 20036-3816
Telephone (202) 785-9100
Telefax (202) 785-9163

January 26, 1999

Via Certified Mail
David Carson, Esquire
Office of the Copyright General Counsel
James Madison Memorial Building
LM Room 403
First and Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Docket No. 97-1 CARP SD 92-95
Distribution of 1992, 1993, 1994 and 1995 Satellite Royalty Funds
Filing of Original Signature Pages

Dear Mr. Carson:

Enclosed please find the original signature pages for the testimonies of James Von Schilling and Alan Wurtzel, photocopies of which were filed with Program Suppliers' original direct testimony on January 8, 1999. Kindly replace the photocopied pages with these originals.

Please date-stamp the two additional copies provided and return them to us in the self-addressed stamped envelope.

Very truly yours,

Gregory O. Olaniran

Enclosures
C: Joint Sports Claimants (w/o encl.)
::ODMA\PCDOCS\WDCDOCS\14141\1

MORRISON & HECKER L.L.P.
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January 28, 1999

By Hand
David Carson, Esquire
Office of the Copyright General Counsel
James Madison Memorial Building
LM Room 403
First and Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Docket No. 97-1 CARP SD 92-95
Distribution of 1992, 1993, 1994 and 1995 Satellite Royalty Funds
Revisions to Testimony of Linda McLaughlin

Dear Mr. Carson:

Please find enclosed for filing one (1) original set and five (5) photocopy sets of the following revised pages of Testimony of Linda McLaughlin that was filed with Program Suppliers' direct testimony on January 8, 1999: pages 1, 4 and 5 and Tables 3, 4A and 4B. Kindly replace your existing file copies with the revised copies.

Please date-stamp the two additional copies provided and return them to us.

Very truly yours,

Gregory O. Olaniran

Enclosures
C: Joint Sports Claimants
::ODMA\PCDOCS\WDCDOCS\14186\1